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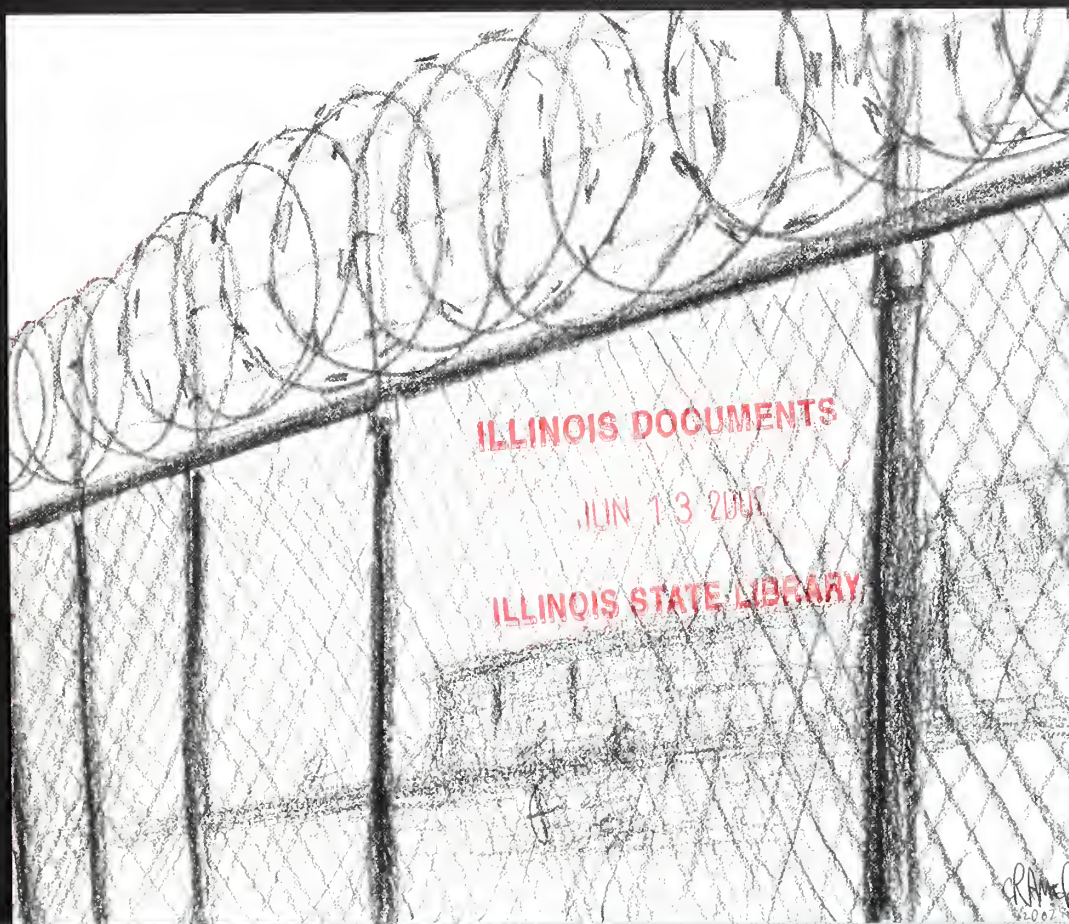
Illinois Issues

June 2002 \$3.95

A publication of the University of Illinois at Springfield

HARD TIME

Illinois is among those states looking for ways to downsize a prison industry that has been on a growth curve for more than three decades



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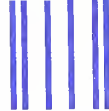
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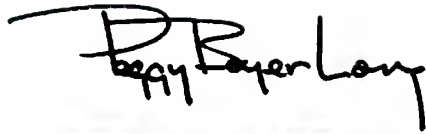
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Crises could spur creative thinking in state corrections policies. Or not

by Peggy Boyer Long

Crisis can cloud judgment. Or it can foster creative thinking.

And Illinois may have reached just this critical juncture in its correctional policies overall, and in its procedures for imposing the death sentence in particular.

We've been coming up on this crossroads for some time. Over the past two years, at a minimum, this magazine has closely followed mounting concerns about this state's over-capacity prisons, its confusing, and perhaps too-punitive, criminal statutes and the close-call imperfections of its capital punishment system. But now, two crises could serve to clarify the purpose of, or spur change in, these policies. Or not. At the least, there are sufficient pressures to force this choice: Move forward or run in place.

The more immediate problem is that there are too few dollars to sustain in the near future what had once appeared to be the state's most reliable growth industry. For nearly three decades, in the wake of a political mood to get tough on crime, Illinois has promulgated, feverishly, a prison building program of boom-time proportions. In the last decade alone, the state built or planned 21 prisons, work camps and juvenile detention centers at an estimated cost of \$818.7 million. When imposing stiffer penalties no longer carried as much political urgency, the state

rested its case on a far-more-naked appeal to local economic development.

Now, Tim Landis writes, beginning on page 14, that Illinois is among those states looking for ways to downsize the prison industry in an effort to solve a budget crisis. Options under discussion in this state include shuttering some prisons and issuing more contracts to private service providers.

Landis reports that Illinois is not yet exploring some of the more fundamental changes under way in other states. For example, California, Florida, Michigan and Ohio are among states that already have approved plans to divert nonviolent drug offenders to alternative treatment programs. "Backers of the California reforms," he writes, "estimate that 36,000 prisoners, and probation and parole violators, will be diverted from prisons at a savings of up to \$150 million a year."

A gubernatorial commission is currently reviewing Illinois' sentencing statutes with an eye to making them more coherent and consistent. But after that panel meets its straight-forward mandate, policymakers might want to consider more fundamental changes in sentencing strategies.

They're unlikely to consider the most far-reaching change: abolishing the state's death penalty. Still, a separate Commission on Capital

Punishment, which released its report in April, has given them other reform possibilities to chew on.

Gov. George Ryan, a proponent of capital punishment throughout his political career, created that commission after 13 of Illinois' inmates walked off Death Row because they were wrongly convicted. To put this social and political crisis in perspective: Only a dozen inmates have been executed since Illinois reinstated the death penalty in 1977. Ryan asked the commission, whose 14 members included judges, prosecutors and public defenders, to review every step in the process and recommend ways it could be made more error-free. They suggested 85. We outline some of them in this issue.

But the commission went further. Daniel Vock writes, beginning on page 17, that a scholarly analysis conducted alongside the panel's review uncovered other disturbing shortcomings in the death penalty system for which there may be no ready solutions: The decision to impose this state's ultimate sanction is greatly affected by where a murder occurs and the race of the victim.

Illinois is not alone, certainly. But that doesn't absolve this state, or give Illinois policymakers a free pass on the search for solutions. This crisis, too, should motivate all of us to do some creative thinking. □

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Credits: Mike Craner drew the artwork for this month's cover and stories.

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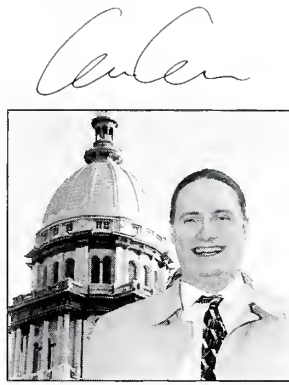
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The future of Illinois' death penalty system is now in lawmakers' hands

by Aaron Chambers

There's the ideal. There's reality. Then there's politics.

When Gov. George Ryan two years ago put a hold on Illinois executions and formed a commission to consider improvements in capital punishment, he inspired visions of perfection. The public, which had been juggling images of innocent people clogging Death Row, was suddenly contemplating a regenerated, error-free death penalty.

The moratorium, imposed when 13 condemned men were found to be wrongly convicted, was heralded around the world as Ryan focused attention on such concerns as overzealous prosecutors, incompetent defense counsel and dependence on notoriously unreliable eyewitness testimony.

Last month, Maryland's governor called a moratorium of his own. Another 15 states have considered, but not imposed, such a halt.

In a television documentary on the nation's death penalty woes filmed shortly after he called the moratorium, Ryan told producer Bill Kurtis that the public demands "fairness and accuracy" in capital punishment. "I don't have to say this — it goes without saying — but if we're going to have a system, it's got to be perfect," Ryan said. "Can we have a system that is? I don't know at this point."

Perfection — no chance of error in the administration of justice — would

Perfection in capital punishment, as with other elements of criminal justice, is impossible to achieve.

be ideal. But reality is that it can't be perfect because it depends on the work of human beings. All of the players in the criminal justice system can perform their parts to the best of their abilities, but there still will exist a chance, however minute, that an innocent person will be sentenced to death.

"You have to concede the possibility of error because there is no such thing as an errorless human event," says Frank McGarr, a former federal judge and chair of the governor's commission. "But it is a risk so minimal that, like every risk you take in society every day, you just live with it. You don't know when you leave the house that you're going to get to work, but you leave the house anyway."

Perfection in capital punishment, as with other elements of criminal justice, is impossible to achieve. But there are measures that can minimize the chance for error.

This month, the General Assembly is scheduled to open hearings on reform

proposals delivered by the governor's commission. After completing a top-to-bottom study, the commission in April made 85 recommendations for change in the administration of the death penalty.

It concluded that "no system, given human nature and frailties, could ever be devised or construed that would work perfectly and guarantee absolutely that no innocent person is ever again sentenced to death." At the same time, the collective recommendations "would, if implemented, answer the governor's call to enhance significantly the fairness, justice and accuracy of capital punishment in Illinois," the commission said.

But this is where the horse-trading starts. Unlike the commission members, legislators have political considerations to weigh. And despite the commission's wish to get all of its proposals written into law, lawmakers appear unlikely to adopt some of the boldest ideas. Since they received the commission's report two months ago, they have given the recommendations a lukewarm reception.

Under one proposal, police would be required to videotape custodial interrogations of suspected murderers. Another proposal would create a board to review prospective capital cases. State's attorneys would need to get that board's permission to seek death in a murder case. The commission would do away with 15 of the 20 statutory factors used to qualify defendants for the death penalty, including murder in the course of a felony, one of the most popular. The commission also would require the Illinois Supreme Court to ensure each death sentence is proportionate to the crime.

But prosecutors, who carry substantial weight in the GOP-controlled state Senate, complain that requiring police to videotape interrogations would prove too burdensome. As for repealing eligibility factors to narrow the reach of the death penalty statute, lawmakers in both chambers say the factors, especially felony murder, were passed for good reasons and should be kept.

Lawmakers certainly have their own ideas about what's necessary to improve capital punishment. And unlike the commission's members, they must respond to certain constituencies. With the November general election looming, some legislators this spring were reluctant to cast votes that could be construed as pro-defendant or anti-law enforcement.

Ryan did push the General Assembly to take up the commission's recommendations this spring. He tried to capitalize on any political momentum resulting from release of the report — the culmination of two years of study and, for lawmakers, suspense.

Lawmakers, however, decided to put off consideration. Noting the commission studied capital punishment for more than two years, Senate President James "Pate" Philip, a Wood Dale Republican, says there wasn't ample time at the end of session. "We're not going to rush into it, but we're going to have some hearings on it," he says. "We want some input from the state's attorneys and judges."

But any political momentum generated by the recommendations and the legislation could fade over time, especially as lawmakers spend the summer collecting input from such special interests as prosecutors and dissecting the report's individual proposals. That could translate into diluted death penalty reform, a troubling prospect for those who contend the system needs comprehensive repair.

"I don't say that all 80 pages of it have to be enacted," says McGarr, the commission chair, "but all the principle things we recommended are part of a very carefully constructed reform system. And if you leave any of them out, you leave a flaw in the system."

Actually, there already are safeguards in place to strengthen the administration of justice relative to capital punishment. The standard for conviction in a death penalty case is the same as in noncapital cases — proof beyond a reasonable doubt — but capital cases in Illinois automatically are subjected to additional review by the state and federal supreme courts.

Further, the state Supreme Court last year implemented a series of new rules,

including one that requires prosecutors to meet certain experience requirements before handling a capital case. In another effort to restore integrity to the system, the legislature two years ago created a trust fund to help pay for such death penalty trial expenses as retaining a forensic expert. This law was designed to alleviate the disparate quality of funding in death penalty cases.

Still, the gubernatorial commission's report was the most anticipated of any death penalty reform effort. It contains the greatest analysis of capital punishment in Illinois and the most ambitious proposals. That puts the future of the death penalty before the legislature. Now the burden is on lawmakers to repair the system the governor calls "flawed"; they must decide whether to fashion a law in the image of the governor's ideal.

"I think what you want is a system that does its very best to avoid errors, especially in capital cases," says House Speaker Michael Madigan, a Chicago Democrat. "You're not talking about minor matters; you're talking about capital cases where a person's life is on the line. So you want the system and the administration of the system to be as well done as humanly possible."

Senate President Philip adds: "There is no perfect system; there's always going to be a flaw. When you think you've got it fixed, things happen. But we ought to dot the I's and cross the T's. We ought to use DNA. We ought to use all those safeguards to make sure that person is guilty."

Sen. Kirk Dillard, a Hinsdale Republican who sponsored the governor's legislative package this spring, says the proposals could be voted on in the November veto session. "I would look for the governor [who leaves office in January] to really push us because he desperately wants to sign legislation during his term on the topic of the death penalty," he says.

Meanwhile, the governor says he'll keep the moratorium in place until the legislature acts on the commission's report. At the same time, he says he might commute to life in prison the sentences of some or all of the 160 people on Death Row. The commission's proposed measures would not be

retroactive, so inmates already on Death Row would not benefit.

Ryan says he would not use the threat of commutations to leverage lawmakers into passing his commission's reforms. "I'm not running for any office; I've got nothing to do politically," he says. "I'm talking about saving some innocent guy's life who may be executed for a crime he didn't commit."

Clearly, Ryan is conflicted about the imperfect nature of the death penalty system. He wants perfection: "Why wouldn't I want a perfect system? We're talking about people living and dying." But he hints he won't get it: "If they put in a system that I think is good or without error, then we ought to give it a try for a while."

He's not the only one to struggle with this. In 1998, Chief Justice Moses Harrison of the Illinois Supreme Court wrote in a dissent that the death penalty law is unconstitutional because, he contends, an innocent person inevitably will be executed. A majority of the court disagreed, saying the Death Row inmate who raised the argument was simply attacking the American criminal justice system. "Indeed, in a sense, defendant's protest is unanswerable," Justice Charles Freeman wrote for the court. "Have mistakes been made? Will mistakes be made? Certainly."

Lawmakers, of course, won't say they are comfortable with the possibility that an innocent person could be executed. Rather, those who favor the ultimate punishment emphasize their position that the death penalty is appropriate in some cases and should be preserved.

Ultimately, the legislature may face the question of whether it should eliminate the death penalty because the risk of executing an innocent person is inherent in any such system. At least that's what abolitionists hope. Yet, arguments to abandon capital punishment barely resonate in the General Assembly.

"This is a governmental system fashioned by human beings, and the current one was found to be ineffective," Madigan says. "The current exercise is designed to try and correct the defects, which I'm sure everybody in the process would want to do, and they will do to the best of their ability." □

BRIEFLY

LEGI CHECKLIST

Two days past the spring session deadline, lawmakers banged together a \$53 billion state budget for the fiscal year that begins July 1. But with revenues plummeting daily and the prospect of court challenges to tax increases legislators approved to support spending, the budget that went to the governor's desk remained just a blueprint. House Speaker Michael Madigan said there might be a special session this summer to patch up holes.

Substantive measures went to the governor as well. They're posted under "categorized reports" at www.legis.state.il.us/reports/status/statusrpts.html. Here are a few.



DNA

All convicted felons would be required to submit DNA samples to a state police-maintained database under legislation sent to the governor (see *Illinois Issues*, March, page 8). Under current law, only sex offenders must submit samples.

Lawmakers also approved a measure to end the statute of limitation for sex offenses when investigators collect a DNA sample they think might belong to a suspect. In most sex cases, prosecutors have 10 years to take a case to court.



Terrorism

For the second time since September 11, lawmakers sent the governor legislation designed to fight terrorism by creating several new crimes and enhancing the investigatory powers of law enforcement officials (see *Illinois Issues*, May, page 14). Ryan vetoed the first version because, among other reasons, it would make terrorists who kill eligible for the death penalty. The governor argued they would be eligible under one of the 20 existing eligibility factors. Nevertheless, lawmakers retained that provision.



Juvenile justice

Lawmakers want to put some juveniles back into juvenile court. They sent the governor a measure that would permit certain juveniles charged with adult drug crimes to petition for a transfer. Over two decades, Illinois and other states passed laws that sent juveniles to adult court where they are subject to adult conviction and sentencing. "We're really finding that some of these efforts were counter-productive, particularly with the drug offenses," says Rep. Larry McKeon, a Chicago Democrat and sponsor.

Lawmakers also want to encourage special drug courts for juveniles. In drug court, a juvenile would be subject to alternative penalties such as public service or group therapy. Such courts already exist in some judicial circuits.



Hate crimes

Lawmakers moved to strengthen the state's hate crime statute. They sent the governor a measure to create the offense of conspiracy against civil rights. The offense, which would mirror federal law, would be defined broadly as conspiracy to use violence, threats or intimidation to interfere with the "free exercise of any right or privilege" under state or federal law. Rep. Jeff Schoenberg, an Evanston Democrat who sponsored the measure, says Illinois already has one of the strongest hate crimes laws in the nation. But he says his proposal will enable prosecutors to charge leaders of hate groups who prompt their followers to commit the crime.

Under a separate measure, an insurance company would not be able to cancel a policy simply because the policyholder makes multiple hate crime-related claims.



Identity theft

Victims of identity theft, America's fastest-growing white-collar crime, may soon have a means to sue their attackers for monetary damages.

Legislation approved by both chambers would permit a victim to recover court costs, attorney's fees, lost wages and actual damages (see *Illinois Issues*, March, page 14).



Illegal drivers

Legislators approved two measures to penalize drivers who aren't supposed to be on the road. One would let police seize the vehicle of a person convicted of driving on a revoked or suspended license when the suspension or revocation is the result of a DUI conviction, a conviction for leaving the scene of a personal injury accident or a conviction for reckless homicide.

A second measure would boost penalties for driving without proper credentials to up to six months in jail. Currently, that's a petty offense.



Heroin

Penalties for heroin would be increased under legislation that went to the governor. The measure, designed to deter drug dealers from pushing the opium derivative, would make delivery or possession with intent to deliver one gram or more a Class 1 felony punishable by four to 15 years in prison. The offense also would carry a maximum fine of \$250,000. Under current law, an offender must deliver or possess 10 grams or more of heroin in order to face that penalty, but only one gram of cocaine. Prosecutors contend the discrepancy creates an incentive for dealers to push heroin over cocaine (see *Illinois Issues*, April, page 6).



Priestly misconduct

Lawmakers sent the governor legislation that would require clergy to report suspected cases of sexual abuse to the state Department of Children and Family Services. Sen. Dan Cronin, an Elmhurst Republican, says it's a response to the American Roman Catholic Church's failure to report to law enforcement officials cases in which priests were alleged to have molested young parishioners. It would

not require clergy to report allegations of sexual misconduct made during confession.

Animal abuse

Two Cahokia high school students took animal cruelty to a new level. They reportedly tied a cat to a tree, threw firecrackers at it, video-taped the ordeal and tried to sell the tapes to fellow students. The boys also inspired legislation. Lawmakers approved a measure to prohibit creating or selling a depiction of animal cruelty. A first offender would face up to one year in jail. A second offense would be punishable by one to three years in prison. In addition, a court could order psychiatric or psychological testing and treatment. For juveniles, that testing and treatment would be mandatory.

Lawmakers also approved a measure to increase the penalty for injuring a police dog. If the animal is killed or totally disabled, the offense would bring two to five years in prison. Otherwise, the punishment would be one to three years.

School construction

The Chicago Public Schools could levy a new property tax and reap as much as \$400 million for school construction under legislation sent to the governor. The proposed capital improvement levy would have to be approved by the Chicago City Council. Under the plan, the city's homeowners would pay an additional \$1.70 per \$100,000 of market value, giving the schools an extra \$3.6 million each year. The schools could spend that money directly on construction or issue up to \$400 million in bonds against the levy and use the proceeds for debt service.

Teacher certification

Prospective teachers would not be able to enroll in a teacher preparation program at a recognized teacher training institution unless they pass the basic skills test required for teacher certification under a measure approved by lawmakers. The action follows news reports that many working teachers cannot pass the test.

Ethics

Lawmakers moaned and groaned that the measure wouldn't discourage government employees from taking gifts. Then they overwhelmingly voted "aye," applauding themselves for backing legislation that at least one proponent suggests could have limited the licenses-for-bribes operation now under federal investigation. The measure would prohibit executive branch employees in state or local government from soliciting or taking contributions from anyone engaged in a business or activity over which that worker has regulatory authority. Critics argue the measure is virtually meaningless because there are few government employees who serve in a regulatory capacity. The language would be added to the state's Gift Ban Act. Last month, the Illinois Supreme Court dismissed a constitutional challenge against that law because the plaintiffs, elected officials, lacked standing to bring the suit.

Crematories

This spring, a horrified nation watched Georgia's officials search for bodies that were to be cremated but instead were packed in boxes and strewn about the grounds of a crematorium. Illinois lawmakers hope to avoid such a scene. They sent the governor a measure strengthening regulation of crematories. Pushed by Illinois Comptroller Daniel Hynes, who already oversees state-regulated cemeteries, the measure would centralize regulation of crematories.

Statewide connection

The Illinois Century Network, a telecommunications system linking the state's schools, libraries, museums and government agencies, would be self-governing under a measure that went to the governor. It would authorize a policy committee for the network, which has operated under the auspices of the Illinois Board of Higher Education, and establish a fund under the committee's control.

Skyway and use tax

Lawmakers are offering a

property tax break to any private entity that operates the Chicago Skyway, a toll road connecting the Dan Ryan Expressway to the northeastern tip of Indiana. The measure also would repeal a law requiring suburban retailers to collect and remit to Chicago a tax on merchandise they sell to Chicagoans.

Liquor law

Lawmakers approved legislation to repeal a law designed to protect the liquor empire of William Wirtz. A federal judge found that law unconstitutional.

Patriotism

Public high school students would be required to recite the Pledge of Allegiance each school day under a proposal sent to the governor. Under current law, only students in public elementary and middle schools must do so.

Commemorations

The nation's 40th president, an Illinois native, may get his own state commemorative day. February 6 would be designated "Ronald Reagan Day." The legislature also moved to honor victims of the September 11 terrorist attacks.

Gambling

Lawmakers defeated a proposal to shift unused gaming positions to the state's four top-grossing casinos. The measure, pushed by the gaming industry, was designed to help close a state budget hole. Opponents said that would amount to an expansion of gambling. State law allocates 12,000 gaming positions to 10 casinos. One of those licenses, for a boat sought by Rosemont, has yet to be approved. Meanwhile, Rock Island's casino is not using 400 of its positions. The proposal would have shifted those positions to Chicago-area casinos for 18 months. During that time, they would pay a higher tax on proceeds. The higher tax, coupled with more gambling, proponents said, would have meant an additional \$200 million for the state.

Aaron Chambers

UPDATES

- President George W. Bush signed a \$190 billion agriculture bill that boosts federal subsidies for Midwestern farmers, despite worries they encourage over-production and depress prices (see *Illinois Issues*, November 2001, page 14).
- The Mormons opened a reconstruction of their temple in historic Nauvoo (see *Illinois Issues*, October 1995, page 33).
- Amtrak tapped David Gunn to head the beleaguered national passenger rail company (see *Illinois Issues*, April 2002, pages 18 and 21).
- A judge ruled Southern Illinois University trustees violated the Open Meetings Act when they fired Carbondale chancellor Jo Ann Argersinger (see *Illinois Issues*, July/August, 1999, page 38).

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LEGISLATIVE MAP GOP loses another round

Nearly two months after the primary, a three-member panel of federal judges dismissed the last remaining complaint in a Republican suit over the state legislative map. That action means the GOP has nowhere to go but the U.S. Supreme Court in its direct challenge to the shape of the map.

The Democrats won control of the map-making process in a lottery. Their plan is designed to help their party solidify a majority in the Illinois House and give them a chance to take control of the state Senate.

The federal judges ruled the map does not dilute the voting power of blacks, as the Republicans alleged. The decision marks a departure from a previously accepted "rule of thumb" that 65 percent of people who live in a representational district must be minorities for it to qualify as a minority-dominated district.

Instead, the judges relied on evidence presented by the Democrats' expert witness that, historically, blacks have controlled the outcomes in Democratic primaries and general elections in the disputed districts. To support his conclusions, the expert, Allan Lichtman, relied on precinct-level poll results in races that pitted blacks against whites over the past decade.

Black candidates netted at least 58 percent of the vote in each of the disputed districts, and their vote totals often topped 80 percent, the judges noted in their decision.

"There is no such thing as a rule of thumb when you have this type of evidence," says William Harte, one of the Democrats' lead lawyers in this year's redistricting battles.

Democrats claim that 17 or 18 of the new districts favor minorities, but Republicans counter that only seven of those pass the 65 percent test. Federal courts set the 65 percent level as a way to compensate for differences between the black community and the population at large. For example, a higher percent of the black population is not old enough to vote, and blacks tend to have lower voter turnout and lower voter registration than the population at large.

The Democrats' interpretation was backed by several minority advocacy groups, including the National Association for the Advancement of Colored People and the Mexican American Legal Defense and Educational Fund.

But a lawyer for the Republicans maintains that the panel's departure from the 65 percent test could warrant review from the nation's highest court, especially because panels in New Jersey and Texas also elected to scrap the rule of thumb.

"We'll see if it's an issue the U.S. Supreme Court would be interested in, given that it is a departure from precedent," says Steven Molo, a Chicago attorney.

The judges' decision is the latest in a string of setbacks for Republican court challenges in this round of redistricting.

The GOP sought to pre-empt a lottery to determine which party would control the process last summer. But the same panel of federal judges — two of the three are Republican appointees — ruled the process is valid.

Secretary of State Jesse White pulled a Democrat's name out of a hat in that tiebreaker. Republicans contested the resulting map before the Illinois Supreme Court, claiming the districts in the plan were not compact, as required by the Illinois Constitution. In a 5-2 partisan split, the state's high court ruled the Democrats' plan is valid.

Legislative candidates used that map in their March primaries.

A separate case is still pending in federal court to determine whether officials should rely on at-large population figures or the number of citizens when trying to draw equally populated districts.

Daniel C. Vock

Statehouse reporter, Chicago Daily Law Bulletin

REPORTS

Panel calls for growth planning

Illinois is ill-prepared for potential negative impacts of future growth, according to a two-year study by the Illinois Growth Task Force.

The legislative panel, chaired by Republican state Sen. Steven Rauschenberger of Elgin, found that zoning and planning powers are fragmented among competing local governments, and that state agencies often work at cross-purposes in ways that can adversely affect rational local development.

Among the group's suggestions are a statewide inventory of planning and growth decisions, and coordination among state and local jurisdictions.

While acknowledging that cities' and villages' comprehensive plans are "local in nature," the task force notes that such plans may conflict with neighboring city, county and regional plans to such a degree that many communities fail to look outside their boundaries during times of growth.

Key public concerns cited in the report were the need preserve open spaces, protect prime farmland and conserve wetlands.

In particular, the group found broad support for open space preservation as evidenced in recent voter approval of local open space and parkland acquisition measures.

Study finds college less affordable

The opportunity for all citizens to get a college diploma from a public university is in jeopardy, according to a report by the National Center for Public Policy and Higher Education.

The study, *Losing Ground*, finds that lower-income families are increasingly feeling the brunt of rising tuition costs at public schools.

Rather than forgo college, though, more families are choosing to borrow more money to cover those costs. Thus, the percentage of a family's income absorbed by college expenses is rising, according to the study.

From 1992 through 2001, tuition at

four-year public colleges and universities increased more rapidly than family incomes in 41 states. State appropriations to public colleges and universities increased in the period from 1980 to 1998, but tuition continued to go up as well. At the same time, federal and state financial aid hasn't increased at the same rate as tuition. In fact, need-based student financial aid is losing ground to academic financial aid, showing a 13 percent decrease from 1981 to 1999.

The study also found that over the past 20 years, the steepest increase in tuition costs has come during recessions because states slowed increases in higher ed spending.

Congressional Dems detail higher ed cuts

Slamming Shut the Doors to College: The State Budget Crises & Higher Education shows that while the economy is improving, by midyear the states had cut higher ed spending by \$5.5 billion

because of budget deficits totaling more than \$40 billion.

This congressional report was prepared by the Democratic staffs of the U.S. Senate Committee on Health, Education, Labor & Pensions and the U.S. House Committee on Education and the Workforce, as well as appropriation committees of both chambers, with additional analysis by the Democratic staff of the Joint Economic Committee.

To date, according to the report, 30 states have rescinded a total of \$1.5 billion from their annual higher education funding. The proposed budgets for next year show a \$4 billion shortfall from projected need.

Here in Illinois, the state cut \$105 million (the fifth-highest amount among the states) midway through fiscal year 2002, which ends June 30.

According to a report by the U.S. Department of Education, state funding cuts constitute the No. 1 cause nationwide of higher tuition.

Ryan Reeves

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Whoopers return

Five of eight whooping cranes that followed an ultralight plane for seven weeks last fall to a winter home in Florida have returned to their fledgling grounds in Wisconsin — and they made the trip on their own in just 10 days (see *Illinois Issues*, January, page 8).

Four cranes flew into Necedah National Wildlife Refuge, about 90 miles north of Madison, Wis., on April 19 and began to explore their summer home. One crane, however, decided to see more of Tennessee and left the group, returning by its own route. The fifth, called No. 7, was found outside the refuge three days later, hanging out with three sandhill cranes and contentedly munching the spring buffet. On May 4, she was standing in front of her old pen on the grass airstrip where she was trained, and the human crew who had hand-reared the birds and led them on their journey to Florida could finally break out the champagne.

Three whoopers didn't survive the round-trip. One was killed by a power line during a storm on the way down last fall, and two, including the rebellious one who made the trip in a truck, were killed by bobcats in the Chassahowitzka National Wildlife Refuge in Florida.

Those that decided to head for the wetlands of Wisconsin and navigated their own course are part of a success story. To establish an eastern migratory flight path and a stronger flock of whooping cranes, government agencies and nonprofit organizations will continue to work together to take another group of whooping cranes to winter grounds in Florida. Eight chicks already are undergoing early aircraft conditioning with their human trainers. Operation Migration and the Whooping Crane Eastern Partnership hope to lead as many as 18 whoopers to Florida by ultralight plane this fall.

Beverley Scobell

PUBLIC ART

Teaching outside the classroom

In 1916, Carl Sandburg wrote that a sculpture in Chicago “shrivels ... when the motor cars whirr by in long processions going somewhere to keep appointment for dinner and matinees and buying and selling.” That we might continue to do just this — ignore public art — is at the heart of *A Guide to Art at the University of Illinois*, an unorthodox guidebook published by the U of I Press.

Author Muriel Scheinman urges the public to return to school to appreciate those objects that tend to fall under our sometimes not-so-watchful eyes. While some might think a museum is the appropriate place to enjoy the aesthetic pleasures of artwork, Scheinman attempts to remedy this mistake in judgment. Her interests range from the very public sculptures at the university campuses to those in the pastoral settings of the elaborate gardens at Allerton Park.

She promises that the book is “as much social history as art history.” And the text lives up to the promise. Each piece's history is outlined along with the life of the artist. More importantly, Scheinman gives her readers a detailed account, not solely of Illinois' historical and social involvement with the arts, but of Illinois' artistic aims, successes and failures.

The university first became active in the collection and display of art in 1874, when the first fine arts gallery was founded. It was a fine dream. But by 1897, officials had begun shuffling the artworks to various corners of the Urbana-Champaign campus, where they can occasionally be spotted today.

Scheinman notes the nearly forgotten artistic portraits and busts of the Illinois Farmers' Hall of Fame (abandoned in 1923) and the Editors' Hall of Fame (abandoned in 1943) established by the Illinois Press Association. These pieces, she argues, “deserve a better fate.”

Likewise, the University of Illinois at Chicago campus has seemingly forgotten some its treasures. One sculpture, *The Spirit of Medicine Warding off Disease*, used to function as the centerpiece in a landscaped fountain garden. The garden has been replaced by a parking lot, and the sculpture is now being damaged badly by weather and pollution.

At Robert Allerton Park, meanwhile, a copy of Rodin's *Adam* personally commissioned by Allerton was shattered beyond repair when in 1975 a visitor to the park attempted to climb the statue and succeeded only in bringing it to the ground. Other statues have been ravaged, and in some cases stolen.

Yet such tragedies are only half of Scheinman's history. She writes of artists' efforts “to humanize the environment” in which we live, including aesthetic battles between the WPA's Federal Art Project and the university's administration, and the efforts of Robert Allerton to build a property into a work of art by finding a balance between nature and artistic expression.

Perhaps our universities can teach more than what is presented in classrooms. Scheinman thinks the University of Illinois does that simply by virtue of the inclusion of art in its public spaces, spaces to which we might give more attention.

Ryan Reeves



State moves to prevent deer wasting disease

A deadly neurological disorder that has afflicted deer and elk in southern Wisconsin has Illinois officials on the offensive.

Chronic wasting disease, which is part of a group of diseases that include scrapie in sheep and mad cow disease in cattle, has not been found in Illinois' 750,000 wild white-tailed deer population or in any of the 3,365 deer and elk in 178 captive herds. Nevertheless, in April the Illinois Department of Agriculture banned the import of captive deer or elk and restricted the movement of captive animals within the state.

"If chronic wasting disease should occur here, we want to be prepared to stop its progress," says Richard Hull, the state veterinarian and a member of a special task force formed by the Illinois Department of Natural Resources and the state agriculture department to work out a prevention plan. The emergency regulation stopping the movement of any live deer or elk into the state is in effect for just 150 days, but officials are working on permanent rules with a broader scope, says Carole Knowles, spokeswoman for the natural resources department. Employees of that agency will be monitoring the wild deer herds this summer, especially near the Wisconsin border, says Hull.

Last month, the Wisconsin Department of Natural Resources issued special hunting permits to landowners in a 287-square-mile area in the south central part of the state, where 14 cases of chronic wasting disease have been discovered since February. Landowners and hunters are being asked to kill as many as 15,000 white-tailed deer in the eradication zone in an attempt to stop the disease from spreading. Deer hunting contributes more than \$1 billion to that state's economy each year.

Infection in Wisconsin marks the first time chronic wasting disease has shown up on the east side of the Mississippi River. It had been found in free-ranging deer and elk in Colorado, Wyoming and Nebraska. Its reach is farther in captive elk herds, where it has been diagnosed in Colorado, Kansas, Montana, Nebraska, Oklahoma and South Dakota, as well as Alberta and Saskatchewan in Canada.

Chronic wasting disease affects only deer and elk. Most cases occur in adult animals, which exhibit progressive weight loss. There is no known cure nor any diagnostic test for live animals.

Reps. Dave Winters, a Shirland Republican, and Ronald Lawfer, a Stockton Republican, are watching the state agencies' actions closely. Both live on the Wisconsin border and represent constituents in several counties on the border.

"Freezing imports [of captured deer and elk] is a great first step," says Winters. But this may be an issue they'll have to look at in the fall veto session, he says, if the natural resources department's surveillance of deer herds over the summer and fall shows signs of the disease.

Beverley Scobell

4-H celebrates a birthday

The organization of the familiar four-leaf clover doesn't trace its roots to one individual or a specific date, but this year, clubs all over the state and the country are celebrating 4-H's centennial.

Come State Fair time in August, 4-Hers will host a birthday party every day in the Junior Home Economics Building to commemorate the event and showcase 4-H's development through the decades.

"In the past, 4-H was centered around an agrarian economy and lifestyle," says Janice Seitz, director of Illinois 4-H.

"Today, 4-Hers choose projects centered around science and technology, the arts — from photography, to sculpture, to theater — as well as projects that teach leadership and critical thinking skills."

Around the turn of the last century, farming was becoming more scientific, but many farmers were reluctant to try new techniques and products. Young people, however, were more receptive to new ideas. Encouraged by people such as William Otwell

of Macoupin County, clubs began to form to learn more about the science of agriculture. Though the national 4-H exhibits diplomacy by not pointing to efforts by any one person, Illinois claims deep roots through Otwell, who in 1899 donated small packages of seed corn to 500 boys to plant for that year's National Farmer's Institute and later for the Louisiana Purchase Exposition in St. Louis.

Now there are about seven million young people ages 5 to 18 enrolled in 4-H nationwide. In Illinois there are 371,516 kids in clubs, with 31,837 of them in Chicago. The most popular projects among Chicago 4-Hers last year explored the visual arts, embryology and aerospace.

Looking to the future, 4-H leaders and other organizations working with and for children have joined in a centennial initiative, the National Conversation on Youth Development in the 21st Century, which is supported by legislation passed by Congress and signed by President George W. Bush. One goal of the campaign is to reach a nationwide commitment of 5 million hours of volunteer service from young people to meet the needs of their communities.

For more information on the national and state conversations, go to www.4Hcentennial.org.

Beverley Scobell

4-H The Power of Youth



1902 - 2002

Hard time

Illinois is among those states looking for ways to downsize a prison industry that has been on a growth curve for more than three decades

by Tim Landis



Illustration by Mike Cramer

Prisons are the economy in Vienna. Just ask Paul Gage.

At age 82, he's been mayor of that southern Illinois community of 1,500 for 35 years and is himself a former lieutenant at the nearby Vienna Correctional Center. "We don't have any other industry," he says. "They are good jobs at the prisons. People count on retiring from there. They buy cars and they buy houses."

Vienna isn't alone. Dozens of small downstate Illinois communities have enjoyed what amounted to a prison construction boom that began in the 1970s and continued well into the 1990s. From 1990 to 2001 alone, the state built or planned 21 prisons, work camps and juvenile detention centers at an estimated cost of \$818.7 million. The maximum security Grayville prison, announced last year, offered

typical economic incentives to prospective communities: \$140 million in state construction spending, 350 construction jobs, 750 corrections jobs and an annual prison budget estimated at \$55 million.

In fact, historically, prisons have been seen by this state's politicians as a significant form of regional economic development. But, faced with the worst budget crisis since the recession of the

early 1990s, Illinois is among those states looking for ways to downsize a prison industry that has been on a growth curve for more than three decades. Now, the fiscal future of many an Illinois community is on a painful crash course with the state's own worsening bottom line.

And closing prisons is merely one response to a state budget shortfall, which is estimated at \$1.3 billion or more for the fiscal year that begins July 1. Gov. George Ryan closed the aging Joliet Correctional Center in March. He proposed closing Vienna Correctional Center and the Valley View Youth Center in St. Charles — though he later substituted Sheridan for Vienna — and he hinted at the need for more cost-cutting measures if the state's fiscal woes increase.

Illinois has plenty of company. A report released last February by the Washington, D.C.-based Justice Policy Institute details a variety of responses nationwide to a prison budget crunch, including reversal of mandatory sentencing laws and early release of nonviolent offenders, policies that during the booming, tough-on-crime '90s would have been politically unthinkable.

"In state after state, we found that politicians of both parties were proposing prudent cuts to prison populations and budgets," says Judith Greene, a New York-based independent policy analyst who conducted the study.

In Illinois, despite the outcry from some corners of the state, shuttering prisons, or holding off on opening them, may be the most politically palatable move. Illinois Department of Corrections officials insist that closing facilities will have no effect on safety. Corrections Director Donald Snyder Jr. contends the staff-to-inmate ratio will only increase from 1-to-4.12 to 1-to-4.43 under the proposed closings. Further, he asserts that the newer, more efficient prisons can safely absorb inmates. And he notes that, after decades of growth, the state's prison population has begun to decline. That would appear to be the case. As of May, there were 42,500 inmates in the state system,

which is down by 3,000 inmates from a year ago.

"In tough economic times, tough decisions must be made. But we will never jeopardize the safety and security of our prison system while making these decisions," he says.

Across the country, though, more fundamental changes are under way. Greene's study found that \$40 billion, or roughly one of every 14 dollars in general revenue funds, was spent on incarcerating 2 million state and county inmates nationwide in 2000. But the trend, she found, is shifting.

Even Louisiana, which has the highest incarceration rate in the country, has begun considering policies that will reduce the need to build more prisons. California, Florida, Michigan and Ohio are among states that already have approved plans to divert nonviolent drug offenders to alternative treatment programs.

Such a move could save money. Backers of the California reforms, for example, estimate that 36,000 prisoners, and probation and parole violators, will be diverted from prisons at a savings of up to \$150 million a year.

But in Illinois, a plan to save dollars by privatizing prison services has roused the most political controversy. The governor's proposal to turn dietary services for 36 correctional facilities, including 27 adult prisons, over to private contractors amounted to fighting words for union employees and their supporters in the Illinois General Assembly, who have long viewed privatization as a threat to jobs and safety.

The American Federation of State County and Municipal Employees Council 31, which took the plan for early closure of Vienna and Valley View to court, went to court again, contending that privatization would threaten security while saving little if any money.

"You have to have a trained and professional security force there," says Buddy Maupin, regional director for AFSCME Council 31, which represents correctional workers throughout the state. "The kitchen is the most dangerous place in the prison. You have inmates with access

Even Louisiana, which has the highest incarceration rate in the country, has begun considering policies that will reduce the need to build more prisons. California, Florida, Michigan and Ohio are among states that already have approved plans to divert nonviolent drug offenders to alternative treatment programs.

to food, fuels and knives."

The legal maneuvering over downsizing and privatizing corrections was still under way in mid-May. And the governor could veto a measure lawmakers approved that would prohibit private food service in prisons. But whatever the outcome in the judicial and legislative arenas, the policy — and political — debate on these issues is unlikely to end anytime soon in a state where unions hold strong sway. In fact, the food service proposal became such a hot-button issue that use of the word "privatization" is avoided by the corrections department in favor of the less dramatic "contracting for services."

"We never would have done this if it weren't for budget cuts," says corrections spokesman Brian Fairchild. The department estimates the use of private food service contractors would save \$2 million in the remainder of this fiscal year and at least \$15 million over next fiscal year.

Yet the current debate over privatizing dietary service merely breathes new life into an old issue, one that underlay the prison expansion begun in the 1970s during former Gov. James R. Thompson's administration. In point of fact, private companies

have been providing services in Illinois prisons for years, including health care, drug treatment, education and, in the case of the recently closed Joliet prison, food service.

For instance, the state expects to pay \$86.4 million to private prison health care providers in this fiscal year. Spending for fiscal year 2003 is expected to reach \$90 million. Meanwhile, current fiscal year spending on substance abuse programs is estimated at \$10.4 million. Another \$19 million will be spent on education programs. As for dietary contracts, the state will spend just over \$2 million this fiscal year for services at nine "adult transition centers," commonly called halfway houses.

Corrections officials cite health care as evidence that privatization of certain services can work. They also point to the state's experience with private food services at the Joliet prison.

AFSCME officials maintain, however, that the dietary program at Joliet was fraught with security violations ranging from missing utensils to lack of proper inmate supervision. "We had a history of troubles there," Maupin contends.

Such labor/management disputes are common, even with the relatively limited privatization typical of Illinois prisons, says Ernest Cowles, interim executive director of the Institute for Public Affairs at the University of Illinois at Springfield. Cowles and senior researcher Laura Dorman conducted a study two years ago of privately provided substance abuse treatment programs at the St. Charles juvenile detention facility. He says privatization can provide more flexibility in the operation of state prisons, but the expectations of private treatment providers and security-minded corrections officials were sometimes at odds.

"These different groups operate in different spheres," he says. "It gets back to custody and security. If you read the mission statement [of corrections], it's very clear what they're all about. It comes down to serving different masters."

Illinois corrections officials have

sought to assure opponents that private providers, including dietary service workers, would be subject to the same security and accountability as required of traditional corrections employees.

But while safety is always an issue, there are other concerns. Cowles, who holds a doctorate in criminology and was deputy director of the Missouri Department of Corrections from 1985 to 1989, helped oversee that state's shift to private medical services, a move made necessary to assure staffing. "It became very difficult," he says, "to recruit to medical positions to work in a prison environment."

Attitudes toward prison privatization do vary widely from state to state. Texas has been among the most aggressive, even allowing speculative construction of prisons by private contractors. Nebraska last year passed legislation that set guidelines for private construction and operations of prisons.

Though states are considering privatization as a way to save money, it's clear that prison contractors do benefit from the strategy. The nation's largest operator of private correctional facilities, Nashville, Tenn.-based Corrections Corporation of America, manages 61 prisons and detention centers with a capacity of 60,000 beds in 21 states, the District of Columbia and Puerto Rico. CCA, which announced contracts in December to accept inmates from Kansas and Wyoming at a company prison in Colorado, reported revenue of \$980.7 million for 2001 and assets of \$1.9 billion. Indeed, the company is so profitable that it trades on the New York Stock Exchange.

Still, a survey conducted by the Illinois Department of Corrections prior to issuing the proposal to privatize dietary services found that most states, like Illinois, confine private contracts to medical care, substance abuse treatment, food services and education.

At the same time, there are disputes over potential cost savings for states. A frequently cited University of Connecticut study of privatization concluded the "realistic range" of

savings from private contracting of prison services is 5 percent to 15 percent, depending on the type of service provided. The study points out that costs also must be weighed against such factors as quality of operations, security, liability and accountability.

In fact, Cowles says cost cutting is only one element of privatization, and may not be the most important. "I think the jury is still out on the cost issues. Illinois has been very cautious thus far."

As in Missouri, Cowles says, the greater difficulty has been the blending of security with the profit motive in a prison environment. "The primary goal of a private company is profit. If they're not making a profit, they're not going to be around very long."

Given the influence of organized labor in Illinois, this state is unlikely to turn much of its prison system over to private contractors anytime soon. Nevertheless, given the state's current financial outlook, it's likely that privatization of some services, more prison closings and, perhaps, restructuring of sentences for some nonviolent offenders will continue to be part of the policy discussion well into the foreseeable future.

But such debates are little consolation in Vienna, where the combined work force of 815 at the Vienna Correctional Center and the adjoining medium security Shawnee Correctional Center makes prisons one of the region's largest employers. The community reacted to the proposed closing of the minimum security prison with rallies, a bus trip to Springfield to lobby legislators and "Save Vienna Prison" signs sprinkled throughout the local countryside.

Gage argues prison employment has helped spark growth in the community in the past decade, including new hotels, restaurants and a park. Prison employment also helps support two local car dealerships. For him, the downside in these potential correctional strategies can be stated simply: "It would hurt us real bad." □

Tim Landis is the business editor of the State Journal-Register in Springfield.

Deadly equation

The decision to impose this state's ultimate sanction is greatly affected by where the murder occurs and the race of the victim

by Daniel C. Vock

When Gov. George Ryan suspended Illinois executions more than two years ago, he cited the failure of this state's capital punishment system to prevent innocent men from landing on Death Row. At the same time, he charged a special commission with suggesting reforms. Last April, the 14-member panel offered 85.

But a study conducted alongside that top-to-bottom inspection of the death penalty process points to other disturbing shortcomings for which there may be no ready solutions: The decision to impose this state's ultimate sanction is greatly affected by where a murder occurs and the race of the victim.

What's more unsettling is that Illinois isn't alone in this.

Panel members, which included

judges, prosecutors and public defenders, examined every step in the system from police interrogations to the governor's clemency proceedings. But they also asked two out-of-state scholars to do a statistical analysis of nonlegal factors that could play a role in determining whether a defendant receives a sentence of death.

The state gave Glenn Pierce of Northeastern University in Boston and Michael Radelet of the University of Colorado in Boulder unprecedented access to confidential state corrections records, Chicago homicide data, federal homicide reports and other information from state and local law enforcement sources. Pierce, whose specialty is information technology, has worked with the federal Bureau of Alcohol, Tobacco and Firearms to analyze sources of guns

used in crimes. Radelet, a nationally noted expert on the death penalty, previously chaired the sociology department at the University of Florida, where he conducted several studies of that state's capital punishment system before moving to Colorado.

Their joint review of 5,310 first-degree murder convictions during the 10-year span from 1988 to 1997 concluded that defendants were much more likely to receive a death sentence for first-degree murder in rural areas of the state than in urban areas. In fact, all other things being equal, the study showed the odds of a convicted killer in Cook County receiving a death sentence are 84 percent lower than for a similar defendant in the state's rural counties. Further, the study revealed that, after factoring

DEATH PENALTY PANEL **Reform recommendations sent to Illinois lawmakers**

Eighty-five suggestions for improving the state's death penalty system were handed to policymakers.

Gov. George Ryan's Commission on Capital Punishment offered the suggestions in April after a top-to-bottom inspection of the system that took a little more than two years.

Ryan created the commission and established a moratorium on executions after 13 Death Row inmates were exonerated.

The panel reviewed every step in the death penalty process from police interrogations to clemency procedures.

Among the recommendations:

- Interrogations of suspects in homicide cases should be videotaped.
- An independent state forensic laboratory should be created and operated by civilian personnel.
- The federal government and the state of Illinois should provide adequate funding to enable the development of a comprehensive DNA database.
- The 20 factors that make a defendant eligible for the death sentence should be reduced to five: murder of a police officer or firefighter while on the job, or in retaliation for performing official duties; murder of anyone at a correctional facility; multiple murder; murder that

- involves torture; murder of a person under investigation, or anyone involved in the investigation, prosecution or defense of that crime.
- The death sentence should be prohibited for defendants found to be mentally retarded.
- Murder convictions based on the testimony of a single eyewitness or accomplice, without any other corroboration, should not be death eligible under any circumstances.
- There should be a review of death eligibility by a statewide committee.
- If a judge doesn't agree with a jury's decision to impose a death sentence, that sentence should be changed to natural life.

The Editors

in such variables as the number of victims or the defendant's prior convictions, defendants who kill blacks are nearly 60 percent less likely to face the ultimate sanction than those who kill whites. While Pierce and Radelet did find that white offenders were twice as likely to receive death sentences as blacks on a

percentage basis, that distinction vanished once researchers factored in the victim's race.

"This pattern of findings raises important concerns about how the death sentence is imposed in Illinois," they wrote.

Other states face these concerns, too. Last month, Maryland Gov.

Parris Glendening, a Democrat, suspended executions in his state, pending the outcome of a state-funded study expected in September on geographic and racial factors in Maryland's death penalty system.

There are indications Maryland faces the same nonlegal disparities uncovered in the Illinois survey. Nine of that state's 13 Death Row residents are black, and all but one received the death sentence for killing whites. Meanwhile, homicide rates are 10 times higher in Baltimore than in Baltimore County, yet defendants from Baltimore County comprise 70 percent of Maryland's Death Row population. At least part of the reason for the disparity is that the Baltimore County prosecutor has sought the death penalty in nearly all eligible cases for the last two decades.

Ten states, including Maryland and Illinois, have been undergoing state-sponsored reviews of their capital punishment systems, according to the Death Penalty Information Center. Researchers also routinely conduct independent examinations of state death penalty systems. And in all of the states where such studies have been conducted, researchers highlighted geographic and racial disparities. Thus, Pierce says, while the findings for Illinois are disturbing, they are in-line with the experiences of other death penalty states, as well as the federal government. Separate examinations of Florida's and North Carolina's capital punishment systems, for instance, concluded that defendants convicted of killing whites are about 3.5 times as likely to receive a death sentence as those who kill blacks.

Historically, empirical analyses have shown that the race of the victim seems to play a role in how capital punishment is meted out. In 1990, the U.S. General Accounting Office compiled the results of 28 prior studies on race and the death penalty. It concluded that 82 percent of those studies found the victim's race influenced the decision to impose the death penalty. The vast majority of the studies conducted since then have yielded the same results.

"Race of the victim is the lowest

The commission

- Chairman, Frank McGarr. Now in private practice, he served as a federal prosecutor and was chief judge of the Federal District Court for the Northern District of Illinois between 1981 and 1986.
- Co-chair, Paul Simon. Since he retired from the U.S. Senate in 1997, Simon has been a professor at Southern Illinois University and director of its Public Policy Institute.
- Co-chair, Thomas P. Sullivan. Now in private practice, he was U.S. attorney for the Northern District of Illinois from 1977 to 1981.
- Executive director and member, Matthew R. Bettenhausen. He is deputy governor for criminal justice and public safety. A former assistant U.S. attorney in the Northern District of Illinois, he most recently served as the associate chief of the Criminal Division.
- Member, Kathryn Dobrinic. She served as state's attorney for Montgomery County and as the public defender in Christian County.
- Member, Rita Fry. She is the public defender of Cook County.
- Member, Theodore Gottfried. He has been the state appellate defender of Illinois since 1972. Among other responsibilities, that office provides advice and counsel to capital defense attorneys.
- Member, Donald Hubert. He has represented defendants in murder cases as well as police officer defendants in civil brutality cases. He serves by appointment of the Illinois Supreme Court as chairman of the court's Committee on Professional Responsibility.
- Member, William J. Martin. He prosecuted mass murderer Richard Speck during his tenure as a prosecutor in the Cook County state's attorney's office. He also has experience as a criminal defense lawyer.
- Member, Thomas Needham. Now in private practice, he most recently served as the chief of staff for Chicago Police Superintendent Terry Hillard. He also was a Cook County prosecutor.
- Member, Roberto Ramirez. He is founder and president of Tidy International, one of the fastest-growing Hispanic-owned companies in the United States.
- Member, Scott Turow. An attorney, he is a best-selling author of legal novels. He also was an assistant U.S. attorney in the Northern District of Illinois.
- Member, Michael Waller. The state's attorney of Lake County, he is a veteran trial lawyer and prosecutor.
- Member, Andrea Zopp. A corporate attorney, she has been a criminal defense lawyer. She also served as first assistant state's attorney in Cook County and as assistant U.S. attorney in the Northern District of Illinois.
- Special adviser to the commission, William H. Webster. Now in private practice, he served as director of the CIA and the FBI. He also served as a judge of the U.S. Court of Appeals for the Eighth Circuit; a U.S. District Court judge; and a federal prosecutor in Missouri. □

common denominator in all of them,” says Richard Dieter, director of the Death Penalty Information Center.

But in Kentucky, such findings prompted more than handwringing. Researchers were able to show that blacks accused of killing whites were more likely be charged with a capital offense by a prosecutor and to be sentenced to death by a jury compared to any other group of defendants. As a result, Kentucky enacted a “Racial Justice Act,” which allows defendants facing the death penalty to use statistics to show the decision to impose capital punishment was based on race. Kentucky is the only state with such a law.

That statute is unique because it gives defendants a statutory tool to make such arguments, though the U.S. Supreme Court has ruled that defendants must show racial discrimination in their individual cases, rather than in a death penalty scheme as a whole, in order to gain relief.

Though race appears to be such a strong factor in capital cases, the trend is hard to explain. Cook County Public Defender Rita

Fry, a member of Ryan’s commission, suggests that arguments at the sentencing hearing tend to focus a jury’s attention on the value of the victim’s life compared to the defendant’s. Most jurors tend to be white, argues Fry, so they might subconsciously put more value on the life of white victims.

Such tendencies are nearly impossible to erase from the system, Fry concludes. “The best thing we can do is shine a light on the problem to let people know that this is a problem that needs to be fixed.”

Radelet agrees. If states find a way to eliminate race from death penalty decisions, he says, “it would be the only aspect of our society where discrimination is not present.”

And regional disparities, like the effects of race, showed up in studies of the federal system and other state systems.

racial factor in Nebraska.

Regional disparities also are prevalent in the federal system, according to a recent U.S. Department of Justice review. That study found that a small number of U.S. attorneys are responsible for 40 percent of death penalty prosecutions, while a fifth of the nation’s federal prosecutors never seek

capital punishment. Further, a *New York Times* survey, conducted in 2000, found that more than half of the cases in which the death penalty is sought come from southern states.

Radelet attributes Illinois’ regional disparities to political pressures. “Prosecutors face different pressures in different parts of the state,” he believes. “Each time a prosecutor goes for the death penalty, he’s deciding to spend millions of dollars. He has to make a priority decision to try to reflect the wishes of his community.”

Fry also suggests that when murders occur in smaller communities, the residents “take all of that very seriously. They’ll vote for the death penalty without hesitation.” Another possibility, she suggests, is that prosecutors, who

are elected officials, don’t want to appear weak and will seek the death penalty in smaller counties where murders are rare. Prosecutors from larger counties see a lot more murder cases, she adds, so they might not feel as compelled to seek the death penalty for each one.

Lake County State’s Attorney Michael Waller, who also served on the panel, acknowledges that murderers might be dealt with more harshly in rural areas, but he believes that tendency “isn’t necessarily a significant problem for the imple-



Illustration by Mike Cramer

For example, Virginia defendants are twice as likely to face death for first-degree murder in rural areas than in urban areas, according to one study released in December. A separate evaluation of Nebraska’s system, the most comprehensive of any state’s to date, found that both regionalism and the race of the victim appear to have influenced sentencing. But the urban-rural contrast overshadowed the

On the Web

www.idoc.state.il.us/ccpl/ccplreports/commission_reports

mentation of a death penalty system.”

Yet Radelet insists that the results of his study are “very strong” for both disparities, reiterating that defendants in rural areas are 84 percent more likely to receive a death sentence than defendants in Cook County. The odds are 60 percent higher for defendants convicted of killing whites. “If you told me the Chicago Cubs were 60 percent less likely to win ... I’d say that’s a good bet.”

It may also be a good bet that

Illinois’ problem runs much deeper. Radelet and Pierce stress that their study only addressed decisions that were made during a narrow window of the capital punishment process. It encompassed only cases where convictions for first-degree murder were handed down, and the resulting sentence. The study did not include decisions made by prosecutors and police leading up to trial or the jury’s verdict at the guilt-or-innocence phase.

Pierce also notes that the study

did not examine several other extra-judicial factors that could have an impact on sentencing, including the social class of the defendant, whether he or she was perceived as an “outsider,” where the trial was held, what the political climate was at the time and the makeup of the sentencing jury.

In fact, much of that information is hard to quantify. Some of it, such as the racial makeup of the jury, isn’t even recorded by the judicial system because such factors aren’t legally relevant.

Profile

TALL ORDERS, TALL HATS

Matthew Bettenhausen is a central figure in some of the state’s most contentious issues, including the debate over reform of the death penalty

by Aaron Chambers

Matthew Bettenhausen wears lots of hats, all of them tall. Increasingly, this top adviser to Gov. George Ryan is a central figure in some of the state’s most contentious issues. He wants to keep a low profile — he’s an aide, after all, not an elected official. Nonetheless, he manages to cast a long shadow across Ryan’s agenda, including the governor’s ongoing efforts to reform the death penalty.



As deputy governor for criminal justice and public safety, Bettenhausen advises Ryan on such matters as sentencing policies and terrorism preparations, and, on his boss’ behalf, oversees such agencies as the state police, corrections and nuclear safety.

Those are some pretty tall orders, no question. And lately, Bettenhausen seems to be just about everywhere.

He was the driving force behind the governor’s death penalty commission, which, in April, after more than two years of study, produced a thick volume of recommendations aimed at

improving the state’s capital punishment system from start to finish. As the panel’s executive director, Bettenhausen corralled the members and coordinated their work.

A second commission the governor charged with rewriting the state’s entire Criminal Code, another of Bettenhausen’s responsibilities, is still at work.

And last October, Bettenhausen was designated this state’s homeland security coordinator, though the title is largely a formality because he was already doing that job before the September terrorist attacks.

Bettenhausen is up to the task — or tasks. He’s energetic. He’s bright. And he’s modest, crediting agency directors who work under his command. “That’s what truly makes my job great, as well as much easier — the number of great directors that I have out there,” he says.

Bettenhausen isn’t steering the ship by himself, certainly. He couldn’t accomplish much without the support of Ryan and his staff. Still, agency directors and others who deal closely with Bettenhausen cite his enthusiasm and diligence in moving such initiatives as death penalty reform and

anti-terrorism efforts.

“He thinks nothing of calling you at all hours to say we’ve got to get moving on this and get something done,” says Rita Fry, Cook County’s public defender and a member of the capital punishment commission.

She isn’t the only one. Agency directors are just as likely to get calls from Bettenhausen with questions about topics of interest to the media.

He’s a troubleshooter first and foremost. One minute he’s helping to negotiate a new state budget. The next he’s planning state and local responses to potential attacks. That means organizing an expansive response network, beefing up law enforcement and equipping biological testing centers (see *Illinois Issues*, May, page 15).

Bettenhausen is prepared for such a role. His father was the fire chief in Tinley Park, where he was raised. He attended the University of Illinois at Urbana-Champaign, graduating summa cum laude with a bachelor’s degree in accountancy, then went on to earn a law degree.

After law school, he worked briefly for the Chicago law firm of Sonnenschein, Nath & Rosenthal

Because of those restrictions and others, Pierce and Radelet argue that their conclusions are “conservative.”

Nevertheless, in an attempt to address the problems that were highlighted in the statistical analysis, Ryan’s death penalty commission recommended that the Illinois Supreme Court conduct “proportionality reviews” to ensure that defendants from different parts of the state receive the same treatment for similar crimes. Such reviews would be

difficult to conduct without better data collection from the hodge-podge of agencies that currently keep records on murder cases, suspects and victims, the commission warned. Waller, the Lake County prosecutor, argues that the governor — and not the courts — should review the records for proportionality. The governor has broad powers and better resources for that kind of examination, he says.

In any event, Ryan’s panel was adamant that the findings from the

researchers do need to be addressed in some manner. “While perfect uniformity in sentencing may not be possible,” the members wrote, “substantial progress toward a more uniform approach to the application of the state’s most serious penalty available should be a high priority if the state is to retain capital punishment.” □

Daniel C. Vock is a Statehouse reporter for the Chicago Daily Law Bulletin.

before beginning a clerkship for U.S. District Court Judge James Holderman. His work there impressed prosecutors at the U.S. attorney’s office in Chicago, which hired him after the two-year stint.

“Matt has always been a person who can handle multiple tasks with grace and great ability,” Holderman says. “It was clear early on that he was a very talented lawyer in many respects.”

Bettenhausen remained a federal prosecutor for more than 12 years, serving as associate chief of the criminal division, acting chief of criminal appeals, and deputy chief of the criminal receiving and appellate unit. He also acquainted himself with state law enforcement authorities.

In January 2000, a year after Ryan began his term as governor, he hired Bettenhausen. Condemned men were regularly walking off Illinois’ Death Row after getting their sentences and convictions thrown out — a total of 13 were exonerated. Ryan’s administration courted Bettenhausen to help craft a response to this phenomenon. A short time later, the governor called a moratorium on executions and formed the death penalty commission.

Beyond the death penalty, Bettenhausen was hired to handle a host of related issues. He’s charged, for example, with coordinating the efforts of federal, state and local law enforcement and public safety agencies — a role in which he employs his long-standing relationships with federal, state and larger local agencies.

In one such effort, Bettenhausen is working with the federal Bureau of Alcohol, Tobacco and Firearms to enlarge a database used to track discharged bullets and cartridges. The Integrated Ballistic Identification System, which is similar to networks used to track fingerprints or DNA profiles, is up and running in the northern part of Illinois. State officials are working to expand its use.

“Spent cartridges are left at a lot of crime scenes,” says state police Director Sam Nolen. “If we pick up cartridges at a crime scene, enter them into IBIS and later on that gun is used at another crime scene, then we’ll make a match and know that that gun was used at this crime scene and this crime scene.”

In his capacity as deputy governor, Bettenhausen does have authority over the state police and a number of other departments, though agency directors report directly to the governor. Still, he doesn’t manage the agencies’ daily operations. Rather, directors say, Bettenhausen serves more as a policy coordinator for agencies under his control. For example, Nolen says Bettenhausen helped secure extra funds the state police needed to hire more troopers and expand forensic laboratory capacity.

“He doesn’t try to run our agencies. He’s an advocate and a resource for us,” Nolen says. “Does he have the authority to come in here and give me a direction to do something? Yes, he does. But as a general rule we don’t operate that way. He’s our advocate. He helps us out. We keep him

informed. I’m the director of the state police. Donnie Snyder is the director of corrections, and so on.”

Indeed, rounding up financial resources is a big part of the job. Last fall, Bettenhausen lobbied for a \$16.9 million supplemental appropriation to fund homeland security measures. That includes \$2.85 million for the Department of Public Health to enhance its laboratories for bioterrorism testing and another \$2.5 million for the department to begin building a pharmaceutical cache.

Dr. John Lumpkin, the public health director, says he has worked closely with Bettenhausen only since the September terrorist attacks. Typically, that department was not regarded as a public safety agency. Lumpkin says that when he met Bettenhausen, and recognized him as someone with a law enforcement background, he was concerned about how Bettenhausen could grasp public health issues. But Lumpkin says he found him to be a quick study.

Other colleagues make the same observation. At the same time, they say Bettenhausen is demanding. He wants the work done and done in the appropriate time frame.

“Just like all people who are very bright and very fast and who learn quickly, he expects the same from the people who work for him,” says Nolen, the state police director. “Some of the time he’s very demanding. We’ve come to expect that, and we’ve now figured out how to deal with it. We know when Matt wants something to get busy.” □

CRUEL AND UNUSUAL?

Illinois should follow the death penalty commission's recommendation to ban executions of the mentally retarded

by Andrea D. Lyon

Should capital punishment be banned for mentally retarded defendants? Of course it should. And policymakers at the state and national levels now have an opportunity to make that happen.

Last month, Gov. George Ryan's Commission on Capital Punishment, among its many suggested reforms, unanimously recommended that the state of Illinois forbid capital punishment for the mentally retarded. That the decision was unanimous isn't surprising. In plain language, to execute a defendant who is retarded is to put to death a person who functions at the level of a child.

If Illinois were to ban such executions, it would join 18 other death penalty states that have done so. Even the legislature in Texas, which has carried out more executions than any other state, and which recently put a mentally retarded man to death, favored such a ban. But last year, Texas Gov. Rick Perry vetoed the proposal.

Still, the subject is getting increasing attention. The U.S. Supreme Court is about to address the constitutionality of executing the mentally retarded. That's a hopeful sign. In 1989, the nation's high court decided in *Penry v. Lynaugh* that executing mentally retarded people was not a violation of the Eighth Amendment, which prohibits cruel and unusual punishment, because mental retardation can be used as a mitigating factor when considering a sentence of death.

Further, the majority of the justices didn't think there was a "national consensus" against executing mentally

Individuals who are mentally retarded are significantly limited in what they are able to do, and in their ability to think ahead.

retarded people because at the time there were only two states, Maryland and Georgia, that prohibited such executions. Since then, 16 other states have enacted laws prohibiting the execution of the mentally retarded, and the federal death penalty statute also forbids such executions.

Apparently, there now is enough "national consensus" that the court is preparing to reconsider the issue in the case of Daryl Atkins, a Virginia Death Row inmate who is mentally retarded.

So what defines mental retardation? IQ tests measure intellectual functioning and serve as a good shorthand for understanding the scope of the problem. According to a report on mental retardation and the death penalty by the international nonprofit group Human Rights Watch, the vast majority of United States residents have IQs that fall between 80 and 120. An IQ of 100 is

considered average. To be diagnosed as mentally retarded, a person must have an IQ significantly below average, below 70 to 75. If a person scores below 70 on a properly administered and scored IQ test, he or she is in the bottom 2 percent of the American population. An estimated 89 percent of all people who are retarded have IQs in the 51 to 70 range.

What is the practical effect of such a deficit? An IQ in the 60 to 70 range is approximately the scholastic equivalent of the third grade. In other words, executing a person who is mentally retarded and has an IQ of 69 is like executing someone who functions at the level of a 10-year-old.

Individuals who are mentally retarded are significantly limited in what they are able to do, and in their ability to think ahead. An adult with an IQ significantly below average may have trouble driving a car, following directions, participating in hobbies or work of any complexity, or behaving in socially appropriate ways. For most people who are mentally retarded, limited skills make ordinary life extremely difficult unless a caring family or social support system exists to provide assistance and structure.

And that's an additional complicating factor. People facing a sentence of death usually come from extremely deprived conditions and have not received such support. They commonly are victims of or witnesses to violence in their homes, and have few, if any, resources to cope with this lifelong condition. They are easy prey to more cunning criminals who lead them into criminal activity.

A person who is mentally retarded simply cannot see the world the way most of us who are more fortunate do.

Morris Mason, for example, whose IQ tested at 62 to 66, was executed in Virginia in 1985 after being convicted of rape and murder. Before his execution, Mason asked one of his lawyers for advice on what to wear to his funeral.

It's not too soon to make this suggested reform in Illinois. Anthony Porter, whose IQ measured at 51 came

within 48 hours of execution in 1998. By chance, another man confessed during a stay that Porter's defense team had been granted to present evidence of his retardation.

This is not to say that people who are mentally retarded are not responsible for their actions; that is a different inquiry altogether. But to inflict the ultimate sanction on a person who may live in a 25-year-old body, but can only comprehend at the level of a 10-year-old child is

cruel, and should be unusual. It should be banned altogether. □

Andrea D. Lyon is an associate clinical professor of law and director of the Center for Justice in Capital Cases at DePaul University's College of Law in Chicago. She founded the Illinois Capital Resource Center in 1990. A former chief of the Homicide Task Force of the Cook County Public Defender's office, she has tried more than 130 homicide cases, including more than 30 potential capital cases.

Mothers who murder

Is a woman who kills her own child mentally ill?
Many of us think so, but the courts find there's no easy answer

Analysis by Stephanie Zimmermann

When he sentenced Marilyn Lemak to life in prison last April, DuPage County Circuit Judge George Bakalis told her he hoped she would get psychiatric treatment. He said he wanted her mind clear so that she could be haunted by the faces of her young children and hear them asking, "Why, Mom? We loved you, Mom. Why did you do this to us?"

The 44-year-old former surgical nurse had confessed to police that on March 4, 1999, she fed her children, Nicholas, 7, Emily, 6, and Thomas, 3, peanut-butter snacks laced with sleep medication, then used her own hands to smother the youngsters in their Naperville home.

She pleaded insanity, but a jury found Lemak guilty on three counts of first-degree murder. One juror later told the *Chicago Tribune* he "thought she was guilty from the beginning."

The passions inflamed by the Lemak case, in everyone from mental health advocates to death penalty activists, may have made it seem as though the

case was a once-in-a-lifetime occurrence. But the truth is that filicide — the crime of parents killing their own children — is not all that rare.

And punishment isn't uniform.

Consider Debra Gindorf, a Zion mother convicted of killing her two small children in 1985 because she planned to commit suicide and wanted her kids to stay with her. The Lake County woman was sentenced to life in prison without possibility of parole.

Or Kimberlee Snyder of Findlay, Ohio, who hit, shook, slapped and violently threw her 5-month-old daughter onto a bathroom floor, killing her in 1996 after the baby started making noises. She got 15 years in prison.

Or Marianne Biancuzzo of Tucson, Ariz., who hid the remains of her drowned newborn baby in a coffee can after she gave birth over a toilet in 1997. She got only one year in prison.

Arguably, all of these mothers had some mental problems. But because our nation lacks a uniform way to assess cases of mothers who murder

their children, the system often hands down widely divergent sentences. A murder that lands one mother on Death Row might send another to a mental hospital. Here in Illinois, Marilyn Lemak got life in prison. The next test will come in the trial of Champaign pediatrician Ellen Feinberg, who is accused of stabbing her 10-year-old son to death last February.

The inconsistency of the system in Illinois has its roots in two places: a legal standard for insanity that is almost impossible to meet, and our society's inability to agree on what constitutes a serious mental illness and to recognize what might push an individual mother over the edge.

Further, the debate over innocence vs. guilt — what one team of researchers calls the "mad/bad" question — is complicated when it's a mother who commits the crime. Why would someone whose societal role is to nurture snuff out the very life she brought into the world?

"It's such a horrible thought,"

When issues of mental illness enter the courtroom many problems arise, apart from the difficult task of meeting the strict legal definition of insanity.

concedes John Bagley, a member of Concerned Neighbors of Marilyn Lemak, who thinks jurors in Lemak's case disregarded much of the psychiatric testimony. "It's a tragedy and it remains a tragedy."

In their 2001 book, *Mothers Who Kill Their Children: Understanding the Acts of Moms from Susan Smith to the "Prom Mom,"* authors Cheryl L. Meyer and Michelle Oberman estimate that at least once every three days, somewhere in the United States, a mother kills one or more of her children.

Fans of daytime soap operas might think an insanity defense is an easy way out for moms charged with murder. Not so in Illinois — or in many states.

In Texas, Andrea Yates was unable to convince a jury last March that she was insane when she drowned her four sons and baby daughter in the family's bathtub. Similarly, Marilyn Lemak didn't meet her state's legal definition of insanity.

Jurors in Illinois insanity cases are told they must find that the defendant committed the offense with the requisite mental state but because of a mental disease or defect could not appreciate the criminality of the act. Lemak's attorney, Jack Donahue, is appealing his client's guilty verdict, arguing that the state's definition is so confusing it's unconstitutional.

"It's such a fine line," Donahue says.

The law has no shortage of critics.

"The insanity defense for all practical purposes is dead in Illinois," agrees Richard Kling, a former Cook County public defender who now runs a clinical program at Chicago-Kent College of Law. Pointing to unsuccessful insanity pleas by such disturbed killers as Jeffrey Dahmer, who dismembered and ate his victims, Kling cautions that "the standard for 'crazy' is different from the legal standard for insanity."

The way the law is structured "really overlooks the way insanity operates," says Kathleen Hamill, one of the attorneys who has filed a bid for clemency for Debra Gindorf, the Zion mother who killed her two young children. If a person such as the suicidal Gindorf believes giving her children a fatal dose of sleeping pills will send them to heaven, they don't care if it's a criminal act. "Mothers often have a fuzzy line where their sense of self ends and their children's begins," Hamill says. "In a bizarre sense, [what Gindorf did] made sense."

There used to be more leeway in Illinois insanity cases. Until 1995, defendants could argue that even though they knew their actions were wrong, their mental disease or defect made them unable to control themselves. Even so, that argument did not work for Gindorf.

The 1995 change, made in response to popular perceptions that an insanity defense was too easy, also increased the defendant's burden of proof to "clear and convincing evidence" of insanity.

Another legal provision that took effect in Illinois in 1991 — the "guilty but mentally ill" verdict, which was intended to be a middle ground between guilty and insane — also has drawn criticism from some defense attorneys. While it may sound like a compromise, the punishment for "guilty but mentally ill" is the same as with just plain "guilty": incarceration with mental treatment in a prison hospital. "It might make jurors feel good and it might make defense attorneys feel good, but it's meaningless," Donahue says.

If the disparity in sentencing of mothers who kill seems huge, it is especially so with the murder of new-

born babies. One 2000 study cited in the Meyer/Oberman book showed Illinois had the greatest range of sentences for this crime of any state — from just 90 days in prison to 58 years.

Common sense says there's something not normal about a woman like Feinberg, the Champaign mom who volunteered for a school field trip for her 10-year-old son, then stabbed him to death later that day. Feinberg, charged with first-degree murder, is being held without bond. There are definite signs of mental illness in Feinberg's case, but assessing what made her kill her son is a tricky business, to say the least.

New mothers can face a range of hormone-induced problems, from the common "baby blues" to more serious postpartum depression and the more rare symptoms of postpartum psychosis. Some women, like Lemak, whose children were older, reported symptoms of depression that lingered for years, then turned to suicidal thoughts and psychosis. Or, some moms who kill — like Guinevere Garcia, convicted in DuPage County of killing her 11-month-old daughter in 1977, and 14 years later, her abusive husband — may have had mental problems induced by physical, sexual and emotional abuse, independent of child-bearing.

Add to that a host of external factors — anything from a bad home life to holding a fervent religious belief that one's children are better off in heaven — and it may be enough to push a woman to kill her children.

"None of us really knows what's going on in somebody's head — ever," says Suzanne Andriukaitis, executive director of the Greater Chicago Chapter of the National Alliance for the Mentally Ill.

When issues of mental illness enter the courtroom many problems arise, apart from the difficult task of meeting the strict legal definition of insanity. Even though such illnesses as postpartum psychosis have recently made headlines — as with the case of Melanie Stokes, the Chicago mother who leapt to her death from an upper floor of a Lincoln Park hotel last year, leaving behind her physician husband

and 4-month-old daughter — mental health professionals worry there is still considerable ignorance about mental illness.

Jurors who may not be fully informed are expected to listen to expert psychiatric testimony, testimony that often is contradictory, and essentially make a medical diagnosis. Marilyn Lemak's supporters believe that in her case jurors found it easier to relate to the prosecution's themes of jealousy and revenge for her estranged husband's new relationship than to understand the brain chemistry problems that might have led her to kill and attempt suicide.

At the same time, it would be false to act as if anyone who kills her kids must be insane, says Terry Ekl, a former Cook County prosecutor who has practiced as a defense attorney since 1978. Ekl says he was surprised Lemak wasn't found guilty but mentally ill, but he did expect that her insanity defense would fail. Though she clearly was disturbed, there were signs that Lemak planned and concealed her actions, including her refusal of a friend's offer to take care of the kids that day and her concealment of a bottle of tranquilizers, Ekl says. "Those kinds of things are the actions of someone who knew what they were doing."

Though the demands of motherhood are well-known to anyone who has children, moms who kill don't necessarily garner sympathy. Even those who agree that a mother wasn't in her right mind seem to feel a need to punish someone for the loss of innocent lives.

Some defense attorneys actually prefer getting more men than women on a jury in such cases, reasoning that female jurors will feel that if they could raise children without harming them, why couldn't another mother? Others suggest that women, and men, tend to ignore the importance of mental illness because to do so would be to admit that they, too, could fall



apart from other homicides. Mothers suffering from a postpartum mental disorder face a maximum charge of manslaughter and often don't get jail time. A handful of other countries, including Canada, have similar provisions.

Author Oberman, who also is a professor of law at DePaul University, thinks such a statute would be a good

start. Others would like to see Illinois reinstate the provision in the insanity defense that allows for not having control over one's actions. Kling of the Chicago-Kent College of Law adds that jurors should be told that a verdict of guilty but mentally ill carries the same penalties as a straight guilty verdict and that a verdict of insanity means a long confinement in a state mental hospital, not a free pass to the outside world.

Beyond the legal arena, Oberman

Illustration by Mike Cramer

says she hopes people will learn to recognize when a mother is in trouble — before she takes her child's life. Symptoms such as postpartum mental illness, suicide attempts, social isolation and other desperate life circumstances need to be taken seriously, she says.

The all-too-frequent tragedies are compounded when the women who have killed their children finally get treatment, only to be haunted by what they've done. "We spend a lot of resources not just locking them up," Oberman says, "but keeping them from killing themselves." □

Stephanie Zimmermann is a reporter for the Chicago Sun-Times.

prey to such a disease.

"[They] don't want to acknowledge that mental illness could happen to them," says Andriukaitis of the National Alliance for the Mentally Ill. "That's a huge barrier we have to crash through, because it can happen to anyone."

So how to deal with — and prevent — the crime of filicide?

There's a long history of parents killing their children throughout many cultures and time periods, from ancient Greeks leaving unwanted, sickly newborns to die of exposure to the killing of girl babies in countries with strict dowry systems.

In England, laws adopted in 1922 and 1938 set the crime of a mother killing her baby in its first year of life



Illustration by Mike Cramer

In the child's best interest

What can be done to make the custody system quicker,
fairer and less traumatic for the children who go through it?
A panel of judges aims to find out

by Kevin McDermott

While the adoptive parents of the boy known as "Baby Richard" were battling his biological parents for custody in the mid-1990s, one of their arguments spoke volumes about the Illinois court system's process for handling child-custody cases.

The adoptive parents were in court fighting for custody throughout the first three years of the child's life — while he was living with them. By the time the Illinois Supreme Court issued its final word on the matter in 1995, the length of time it took for the ruling had become part of the issue. The baby was old enough for preschool, and the adoptive parents were the only family he had ever known. To take him after so much time, they argued, could cause him severe emotional damage.

In the subsequent opinion that granted custody to the biological parents, then-Justice James Heiple noted irony in the adoptive parents' argument. To accept their argument would establish a precedent in which "persons seeking babies to adopt might profitably frequent grocery stores and snatch babies from carts when the parent is looking the other way," he wrote. "Then, if custody proceedings can be delayed long enough, they can assert ... that the best interests of the child are with the baby snatchers."

Though the case rocked the state's legal and political systems, it wasn't because protracted disputes over child custody are rare in Illinois. They aren't. Custody cases in the state's appellate system routinely take more than a year,

and that's after they've wended their way through the lower courts.

In an effort to solve the problem, Illinois Supreme Court Justice Thomas Fitzgerald last January announced formation of a 15-member committee of judges to study the state's child-custody legal system. Headed by Appellate Court Justice Alan Greiman of Chicago, the committee's assignment is to come up with ways to make that system quicker, fairer and less traumatic for the children who go through it.

The task will be massive. "I wish I had some easy thing, like capital punishment," Greiman quipped recently.

What makes it so daunting is that child custody covers a wide range of cases, from standard divorces, where the parents are fighting over the children, to adoption disputes, to neglect and abuse cases that come to the court's attention by way of state child-protection officials. These cases can go through different branches of the court system. Some involve criminal allegations, while others are civil disputes. They range from the tragedy of children whose families abandon them to the mixed blessings of kids who are desperately sought by competing sets of parents.

What they all have in common, though, is that the end decision will affect the placement of a child. State law, created during the Baby Richard controversy, requires that the child's "best interests" be the overriding consideration in every case. And this is what Greiman's committee aims to

address. "The best interests of the child are affected by the length of time [that end decision] takes," he says.

But matters aren't moving quickly on this front, either. So far, the committee has conducted one organizational meeting. Greiman, a former state representative, says he doesn't intend to rush the process. "The mandate is to examine the laws and all the cases that have implications toward child custody," he says. "We're not jumping into anything."

The underlying problem, of course, is that the answer to the question of what constitutes a child's best interests can be subjective. Some experts believe permanent placement in the first available stable home is best for the child. Others say mending biological families is better for the child in the long run, even if that takes longer than an adoption.

One of the biggest issues facing the committee may be the hardest to resolve: the sheer volume of cases in the system. The Illinois Department of Children and Family Services alone has more than 26,000 children in substitute care placements and another 35,000 in state-supported adoption and guardianship settings. And that's not including divorce and adoption cases that don't involve the agency. It's impossible to say how many of those there are every year because they come from various courts in all 102 counties of Illinois. But Greiman points out that divorce cases alone run in the thousands statewide every year, with a substantial portion of them involving custody disputes.

That volume means long waits on the court dockets. Resolution of custody disputes arising from divorce cases take about a year, on average, in the Cook County courts, say court officials. State children and family services cases remain in the system for an average of 26 months, according to the agency. The department's cases can be especially complex, with options that include reunification with the biological parents, adoption by new parents or continued placement in temporary foster care —

each requiring court involvement.

"After a while, years have gone by and the child is emotionally screwed up," says Chicago attorney Barry Gordon, who handles child custody and divorce.

Though the children in question aren't necessarily poor, Gordon says, people in the court system refer to them as "bag children," a reference to homelessness. "It's a child being thrown around like a football from one parent to the next."

Further, the backlog of cases means

judges can't give the proper attention to each case. For example, judges used to determine child-support payments from noncustodial parents on a case-by-case basis. Today, in an attempt to streamline the system, there is a standard child-support formula for noncustodial parents — 20 percent of net income for one child and a rising scale for more children — that judges can't alter without justification. The result is that crucial adjustments can't be made to account for the special circumstances of each family. "The

HOPE MEADOWS

One small answer

by Maureen Foertsch McKinney

They came as crack babies who couldn't stand noise. Or as siblings who had been passed among foster families. Or perhaps as a 10-year-old scarred by iron burns. These hard-to-place children came to what was once Chanute Air Force Base in Rantoul to find parents and a network of neighbors whose job it is to love them.

This is Hope Meadows: three blocks of ranch houses populated by once severely abused and neglected children, their foster or adoptive families and 62 seniors who moved into low-cost housing in exchange for a promise that they would serve as surrogate grandparents.

Now in its eighth year of operation, the project, called Generations of Hope, was launched with a \$1 million grant from the state to purchase the site and renovate its homes. Brenda Krause Eheart, a University of Illinois at Urbana-Champaign sociologist, founded the program because she was troubled by her research into the treatment of hundreds of thousands of children for whom adoptive parents could not be found.

"We had an empty base and a dream of dealing with the bureaucracy of child welfare and little else," says Eheart, the executive director of the project, which performs research through the university's Institute of Government and Public Affairs.

Today, Generations of Hope is a nationally recognized model for success in finding permanent homes for hard-to-adopt children. In 2000, the project received a "Best Practices" award from the U.S. Department of Housing and Urban Development; Hope Meadows is the subject of journalist Wes Smith's book by that title; and it has been featured in the past year in *Time* and other magazines and such television programs as *60 Minutes*

II. Now Eheart is trying to raise \$20 million to sustain Hope Meadows and to replicate it at other sites.

The children placed there are legally free for adoption, or are expected to be, and have been assessed as having potential to blend into a family, meaning, for instance, that a child known to have a history of sexual acting out could not be placed in a home with younger children.

Most of the children at Hope Meadows have been severely neglected or abused and many have been bounced into multiple foster homes. They often arrive hurt, angry, depressed and unable to perform at grade level.

"Most of these kids come from chronic neglect," Eheart says. "I'll never get used to that. I think they will be fragile until they become adults. That's part of it, allowing them to re-emerge as they mature." Sometimes, the seniors have come to the program out of difficult situations as well.

"This is not *Leave It To Beaver* land," Eheart says. "It's seniors. It's troubled kids. But we've put all these things together and have something that really works."

The idea is to create stability. Generations of Hope does that, Eheart says, by encouraging adoption and offering sustained support for the new families.

As of mid-May, Hope Meadows was home to 47 children — 34 of whom had been adopted. Those children are cared for in 11 widely differing families. The parents who range in age from their mid-20s to late 50s, many with birth children already, have taken in as many as four kids.

Foster families receive rent-free use of seven-bedroom homes and a \$19,000 stipend for a parent to stay home.

cases," says Gordon, "become like cookie cutters."

The simplest solution — dramatically increasing the number of judges and staff — is also the most fiscally untenable.

Another simple fix: Keep more custody cases out of the court system. Some say this could be done by setting up a mandatory arbitration system similar to the one currently used in personal injury cases, in which many cases go through a court-appointed panel of attorneys for an

attempt at out-of-court settlement before moving into the courts.

"When you eliminate cases from the court call," Gordon argues, "you make it possible for the judge to spend more time with each child."

The volume also contributes to a lack of communication among various judges and courts involved in the same case. Child-custody cases come into the system through many different courts. In addition to the 102 separate county circuit court systems, there are other courts that

The underlying problem, of course, is that the answer to the question of what constitutes a child's best interests can be subjective.

Rebecca Ashe was a social worker in Chicago when she decided to move to Hope Meadows. "I was always interested in foster care but, because of the time my job required, I didn't feel I could do it." Then the Champaign native saw Hope Meadows mentioned on *Oprah*. She was fascinated by the element of the program requiring a stay-at-home parent. "It makes more sense than anything," Ashe said when she visited Hope Meadows she found that the children seemed more well-adjusted and happy than the "disjointed" foster children she had worked with over the years. She adopted her 5-year-old son Andrew in February. "We're looking for more."

Parents have to go into the program with the expectation that they will adopt, which can create difficulty for those who do not bond with their wards. For instance, Ken and Joyce Hill of Rantoul said they left the program after declining to adopt a child they didn't believe was a good fit.

The focus on adoption also makes it more difficult to raise money for the project. The approximately \$650,000 in annual operating costs has been raised through several sources, once primarily foster care grants from the Department of Children and Family Services, which have dwindled because permanent homes were found for most of the approximately 81 children who have come through Hope Meadows.

But Eheart says the goal of permanency is fundamental. Families stay at Hope even after they adopt foster children, which provides a kind of safety net. And the seniors, who pay no more than \$350 a month in rent, are there to play a back-up role, perhaps as babysitters or tutors.

One of the homes has been converted into a community center with a library, computer room, kitchen and a large open room lined with shelves of toys and baby equipment. Seniors gather there twice a week for a few hours with children who are too young for school.

One late spring morning, several of the female seniors are entertaining small children with kiddy records and toy instruments. Gwen Pryor, who is rattling a yellow

plastic maraca and swaying her hips to "Finnegan Begin Again," sees a toddler head up the steps to the second floor. "Come back down, Angelo," she croons. "Don't go upstairs, child. Come back here."

The little boy, dressed in neat navy trousers and matching plaid shirt and sweater vest, backs down the stairs and returns to the circle of children — among them, a pony-tailed girl who is banging a yellow tambourine.

That's a crack baby who was once sensitive to noise. "You'd hold her and keep her warm. She didn't like noise, but now look at her," says Esther Buttitta, a 75-year-old retired teacher who came to Hope Meadows five years ago.

A mother of seven with 28 grandchildren and great-grandchildren, she has had plenty of experience as a nurturer. She came to Hope Meadows from Bloomington because her son no longer needed help raising his children.

"I came here because I wanted something to do with my life," she explains. In addition to a purpose, at Hope Meadows she found a support network. After health problems put her in a nursing home, doctors warned she might not be able to return to Hope. "I told them, 'You don't know the people at Hope. They'll take care of me.'"

"It's just been wonderful," says Mary Trotter, 66, who moved into Hope Meadows from her Urbana home three years ago, shortly after her husband died of Alzheimer's disease. "I knew if I was ever left alone this is where I wanted to come."

The retired telephone operator never had children of her own and says her life has been enriched greatly by the youngsters at Hope. "The one who's sick or crying — that's your favorite at the moment," she says.

Eheart says she's trying to demonstrate the emotional benefits for seniors to potential donors. "We need for someone somewhere to recognize the importance of this program as a real solution to some real social problems in this country. We're going to have a flood of baby boomers who are going to be seniors and will need to find a way to give back and to enrich their lives." □

handle various aspects of child custody within each of those systems.

The Cook County Circuit Court system, for example, has four divisions that deal directly with child-custody issues: the Domestic Relations Division, which handles divorces; the Child Protection Division, which handles abuse and neglect cases; the County Division, which handles adoptions; and the Juvenile Justice Division, which handles juvenile delinquency cases.

The same case can conceivably appear in more than one of those courts. An abused child who is put up for adoption, for example, would go through the Child Protection Division and the County Division.

And then, if the case is appealed, it goes to yet another court, the First Appellate.

Greiman says one nightmare scenario has occasionally happened. A parent's rights are terminated by a child-protection judge because of alleged abuse or neglect. While that parent appeals the case up to the Appellate Court, the County Court — unaware the appeal is pending — approves the adoption of the child by another family. Then the biological parent wins the appeal to regain parental rights. That means two courts have made two contrary rulings about who has custody.

In such cases, Greiman says, the most likely resolution is that the approved adoption would have to be invalidated because, technically, the rights of the biological parents hadn't been exhausted, as they hadn't been in the Baby Richard case.

Among issues the commission likely will consider is whether it is possible to designate one judge to follow each custody case from beginning to end while it's in the court system. An alternative could be creation of a formal information-sharing process among different courts.

Meanwhile, people like Linda Abernathy, who advocates for reunification of children with their biological families whenever possible, warn that too much focus on quicker



Courtesy of Generations of Hope



Seniors and children from Hope Meadows

handling of cases could result in poor resolutions.

Abernathy is executive director of Best Interests of Children, a Champaign organization that works with families whose children are in foster care or are at risk of being sent there. She says biological families often feel as though the child-protection system is stacked against them when decisions are being made about whether to reunify children with troubled families or adoptive parents.

"Children need stability in their lives ... but if your definition of 'permanency' is 'adoption,' what it feels like is that there's a conspiracy to take children from their families," says Abernathy.

She says she worries that attempts to revamp the court system with an eye on resolving cases more quickly could stack the deck further in favor of adoptive families because finding a healthy adoptive family is sometimes easier and quicker than repairing a dysfunctional one.

Cook County Public Guardian Patrick Murphy, one of the system's most vociferous critics, says creation of the court's panel is "long overdue."

He says attempts at reform will only work if the group goes beyond looking at the broadstroke issues in the appellate courts — the kinds of issues that made the Baby Richard case such a gut-wrenching one — and focuses on the whole system from start to finish.

Greiman expects to conduct hearings in Chicago beginning this month. The committee already has begun setting up subcommittees to gather data on specific areas of child custody. He says these will include such issues as determination of parental rights and domestic violence.

He says more run-of-the-mill issues also will likely come into play, such as "joint custody" agreements in divorce cases. The agreements, in which both divorcing parents maintain partial custody, are "very common these days," Greiman says,

and arguably can be abused by some parties. "Sometimes it's used as leverage [by the noncustodial parents]. 'I won't ask for joint custody if you agree to accept [smaller payments] in child support.'"

"I voted against it" while in the legislature, Greiman says, referring to the state law that created the joint-custody option. "It seemed to me that if this [type of arrangement] can work, you don't need a court, and if you need a court, it won't work."

Hovering over the child-custody issue is that state mandate, created by the legislature during the Baby Richard case, that makes the child's "best interests" the paramount concern in disputes. "One of the issues we're going to deal with is how expediently these cases should be heard," Greiman says. "We don't have a King Solomon." □

Kevin McDermott is an Illinois Statehouse-based reporter for the St. Louis Post-Dispatch.

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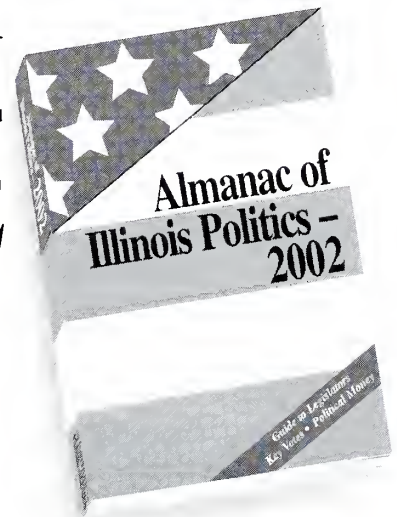
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A woman will head the state's high court



Mary Ann McMorrow

Mary Ann McMorrow will become the first woman to preside as chief justice of the Illinois Supreme Court.

McMorrow's colleagues on the court unanimously elected her to replace **Moses Harrison** as chief justice when he retires in September.

A former appellate judge, McMorrow was elected to the high court in 1992 and plans to run for a second 10-year term in November. In a prepared statement, she said she's confident the court she will lead during her three-year term as chief will be progressive.

The Chicagoan, the first woman elected to the high court, also was the first woman to prosecute major cases in the Cook County state's attorney's office and the first woman to head the appellate court's executive committee. Prior to her tenure on the appellate court, she

served on the bench in the Cook County circuit. She was the only woman — and class president — in her graduating class at Loyola University's law school.

"She is a very caring person and her approach is that of applying facts. It does not involve any gender consideration," Harrison said of McMorrow. "She's simply a good lawyer and that's the highest compliment I can pay any judge."

U.S. attorney confirmed

The U.S. Senate confirmed President George W. Bush's nomination of **Jan Paul Miller** as U.S. attorney for the Central District of Illinois. Miller, who had been serving in that capacity since the January retirement of **Frances Hulin**, was previously an assistant U.S. attorney based in Baltimore.

Chief justice will retire early



Moses Harrison

The message was pure **Moses Harrison**. When the chief justice of the state Supreme Court called *Illinois Issues* last October to praise an article critical of the state's death penalty system, which Harrison argues is unconstitutional, he had but one concern: He wasn't comfortable being characterized as "a darling of the anti-capital punishment community."

"I'd just as soon you call me a darling of sound-thinking people," the judge said.

Harrison has strong beliefs and is proud of them. As he prepares to step down from the Illinois Supreme Court in September, capping 29 years on the bench, he likely will be remembered as a judge who held fast to his ideals on how government should operate — and one who made no apologies for his approach.

After nearly finishing his 10-year term on the high court — it would have expired in December, and he filed for retention to stay another 10 years — Harrison last month cited "personal reasons" for his retirement.

Mary Ann McMorrow, a Supreme Court judge from Chicago, will replace Harrison as chief. **Philip Rarick**, a 5th District Appellate Court judge, will fill Harrison's seat. A former law partner of Harrison's who now has chambers across the hall from Harrison in Fairview Heights, Rarick says he'll seek election to the seat in 2004.

The retiring judge, a liberal Democrat, is best known for his position that the death penalty is unconstitutional because, he contends, it's inevitable that an innocent person will be

executed. The court rejected that position in 1998, but Harrison still dissents from every opinion affirming a death sentence. He stumped against the death penalty in 2000 before the East St. Louis chapter of the National Association for the Advancement of Colored People, telling the crowd his colleagues failed to ensure that the administration of capital punishment in Illinois is just, fair and reliable. Last September, Harrison and Justice Thomas Kilbride called on the court to make its rules designed to restore integrity to the death penalty system applicable to all condemned inmates who were tried before the rules were implemented last year.

Harrison has other crusades. He's a staunch supporter of election rather than appointment of judges. And he consistently votes to keep eminent domain and other government powers in check. "I've always been interested in protecting the individual rights of the ordinary citizen against big government, large corporations and powerful individuals," he says. "I always thought that was kind of my role as a judge."

In court, Harrison is an innate gentleman who runs oral arguments with patience and grace. But he's also stern and resolute: He takes matters before the court to heart and doesn't hesitate to chastise his colleagues publicly when they disagree with him.

On more than one occasion, other justices have rebuked Harrison for attacking them in his published opinions. In one such case, now-retired Justice Benjamin Miller wrote that Harrison "frequently chooses ... to impugn the integrity of other members of the court and to impute improper motives to those with whom he disagrees." Citing case after case, Miller continued: "Thus, at various times, he has characterized majorities of this court as enemies of labor unions, as foes of children, as biased against plaintiffs in civil actions and even as vigilantes."

LINCOLN HONORS

2002 Lincoln Laureates

Six Illinoisans received the Order of Lincoln Medallion, the state's highest honor for individual achievement, at ceremonies in Springfield in May. This year's Laureates are:

- **Bernard Shaw**, a former CNN broadcaster originally from Chicago who may best be remembered for his coverage of the Gulf War from Baghdad.
- **James Stewart** from Quincy, who, as front page editor of *The Wall Street Journal*, won a 1988 Pulitzer Prize for his work on the 1987 Wall Street crash. He has written several books, including *Den of Thieves* about insider trading and *Blood Sport* about the Clinton White House and the Kenneth Starr investigation.
- **Herman Schaalman**, rabbi emeritus of Chicago's Emmanuel Congregation. He is a respected educator and leader of Reform Judaism.
- **Frank Considine** of Chicago, a social services leader and former CEO of American National Can Co.
- **Lou Conte** of DuQuoin, a choreographer and Broadway performer who founded Hubbard Street Dance Chicago in 1977.
- **Jack Greenberg**, a lifelong Illinoisan who is chairman and CEO of McDonald's Corp. and serves on the boards of such organizations as Ronald McDonald House Charities, the Field Museum and the Chicago Symphony Orchestra.

The Lincoln Academy was established 37 years ago to honor Illinois' most distinguished citizens. Past honorees have included John Chancellor, Paul Harvey, Ann Landers, Walter Payton, Ronald Reagan, Mike Royko, Roger Ebert and Gwendolyn Brooks.

A PPOINTMENTS

Corn-to-fuel plant names manager

Rod Bothast will direct the new \$20 million National Corn-to-Ethanol Research Pilot Plant on the Edwardsville Campus of Southern Illinois University. He's a microbiology and biochemical engineering research scientist with more than 30 years' experience at a U.S. Department of Agriculture lab in Peoria.

The 23,000-square-foot plant will be completed this winter and will have a capacity to process 200 bushels of corn a day. "It will be more than just a fermentation plant," says Bothast. The production facility will be configured so that researchers can, from time to time, switch processing methods and equipment to compare efficiencies.

Bothast says environmental regulations, as well as potential problems with foreign and domestic oil supplies, are making research into such renewable fuels as ethanol more important.

The plant is being built with \$6 million from the state and \$14 million from the federal government. Bothast will take charge in August.

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Preservation agency gets new director

Maynard Crossland is the new chief of the Illinois Historic Preservation Agency. Crossland has been the agency's manager of public affairs and development since 1989.

He replaces **Susan Mogerman** who last month announced her intent to leave that position at the end of the spring legislative session.

Mogerman was appointed director in 1990, after serving a year as deputy director of the agency. As the agency chief, she helped plan and develop the Abraham Lincoln Presidential Library and Museum in Springfield. Ribbon cutting for the library is set for November 18. The museum will open in 2004.

DEPARTURES

Bill Miller, director of the University of Illinois at Springfield's Public Affairs Reporting Program for 19 years before his retirement in 1993, is moving from Springfield to a retirement community in Texas. He had been an award-winning capital city radio reporter.



Richard Newhouse Jr.

Former longtime state senator Richard Newhouse Jr. was the first black man to run for Chicago mayor. The South Side Democrat was 78.

An assistant majority leader who retired in 1991 after 24 years in the Senate, he was a champion of minority access to higher education and prisoner rights.

Newhouse had been an attorney, but he established an architectural competition for high school students to encourage minority involvement in that field.

"He was a proud black man who recognized if you're going to bring down barriers you're going to have to put your neck on the line," state Sen. Miguel del Valle told lawmakers. The Chicago Democrat served with Newhouse. "He didn't hesitate once to put his neck on the line."

Indictments at <http://illinoisissues.uis.edu>

The details and the complete text of the indictment of **Lawrence Warner**, **Donald Udstuen** and **Alan Drazek** are available on the *Illinois Issues* Web site. The three were charged last month as part of the ongoing federal investigation of bribery in the secretary of state's office during now-Gov. George Ryan's tenure in that office. Ryan has not been charged with wrongdoing. So far, 54 people have been charged, 43 of them have been found guilty.

KENNEDY HONORS

Former Palos Heights mayor is a profile in courage

In the summer of 2000, when Palos Heights Mayor **Dean Koldenhoven** stood up to constituents and city council members who were trying to thwart Muslims wishing to purchase a site for a mosque, he may have had an inkling that he wouldn't be re-elected. But he had no idea the John Fitzgerald Kennedy Library would honor him as a 2002 Profile in Courage Award winner.

"When the phone call came to our home, my wife said it was **Caroline Kennedy**. I wondered who would have the same name as 'the' Caroline Kennedy," Koldenhoven told those gathered at the awards ceremony in Boston last month. "When she identified herself and told me I was the recipient of the JFK Profile in Courage Award, I interrupted her and said, you mean 'the' Caroline Kennedy?"

The other 2002 Profile in Courage winner was **Kofi Annan**, the United Nations Secretary-General from Ghana. The library also granted a special award to public servants who responded to the terrorist attacks of September 11, 2001.

Two years ago, when the Al Salam Mosque Foundation put in its bid to buy the Palos Heights Reformed Church, two aldermen moved to condemn the building so that it could be put to public use as a recreation center, though the council had considered the idea of buying the property for that purpose in 1998 and failed to do so (see *Illinois Issues*, June 2001, page 14).

At that summer's council meetings some constituents not only wondered aloud about lost recreational opportunities or traffic issues associated with Friday worship services at the proposed mosque, but about why "Muslim ladies do not assimilate" and even "the purpose of their dress." According to city council minutes, one man said that "he does not believe he should force his born-again Christian beliefs on other communities and does not believe these people should come into his community and tell him what to do."

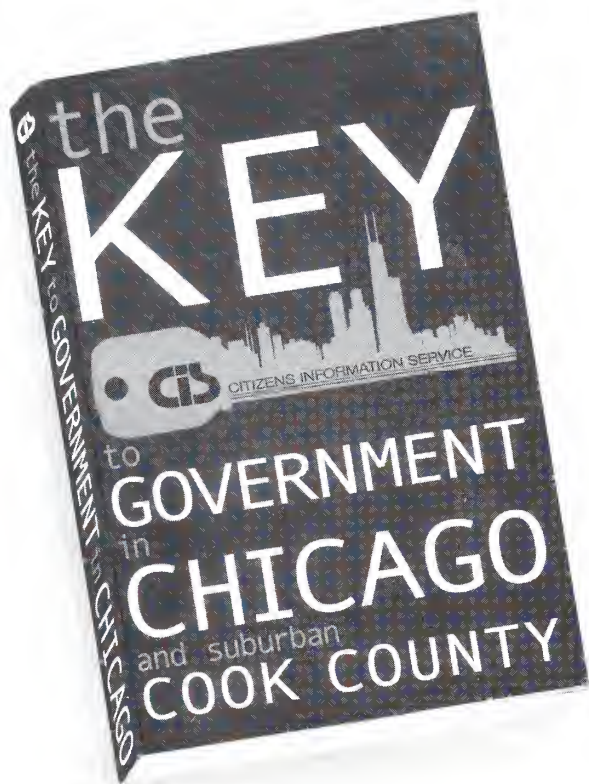
When the move to condemn the building failed, the council decided to offer the Muslim group \$200,000 to cover its expenses and allow the city the right to purchase the property.

But Koldenhoven vetoed the buyout offer, saying it was an insult to the Muslims. Although he encouraged the group to move forward with the purchase and wrote a letter of apology to the Islamic community, the Al Salam Mosque Foundation ultimately decided against buying the church, and in November 2000, Palos Heights voters rejected a proposal to buy the Reformed Church property. In April 2001, the voters turned Koldenhoven out of office.

But the episode has sparked change. Representatives from the U.S. Department of Justice met with Koldenhoven and offered to help start a dialogue group for Muslims and non-Muslims. "It's still meeting today," he says. "In fact, they are starting to get a sense of humor about some things. For example, somebody asked one of the Muslims if it were true that if you died a martyr you got 70 virgins, and he said, 'No, you get one virgin who's 70 years old.' You put people together and they start to relax around each other. And that's the good thing that's happening in Palos Heights."

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Madeleine Doubek



Peter Fitzgerald picks his way through the dark labyrinth of politics

by Madeleine Doubek

Dig a few layers into Peter Fitzgerald's Web site, and there's an amusing picture of Illinois' junior U.S. senator stooped over in a downstate mine shaft. No one who knows the multimillionaire scion of a suburban banking family could accuse him of being a blue-collar laborer.

Still, the photo is emblematic. There he is, wearing a protective jumpsuit and safety goggles. A miner's hardhat, fitted with a light, covers his head. Fitzgerald looks ready for a day of picking his way through the dark and dangerous labyrinths of state and national politics.

That's just what he's been doing in Congress. From O'Hare International Airport expansion to Enron's collapse, from the Abraham Lincoln Presidential Library bidding rules to behind-the-scenes casino agreements, Fitzgerald figures his future lies in uncovering what he believes are dirty dealings in Illinois and American institutions.

Republicans and Democrats see him as an annoying gadfly. But Fitzgerald's wealth and status as a U.S. senator give him credibility. Try as they might, his targets can't bury him. He remains free to shed light into the darker corners of government and business. He used that method to make a name for himself during his tenure as a state senator. He's using it as he mines the marble halls of the U.S. Capitol.

Fitzgerald unearths dealings many citizens are suspicious of and chips away at them in the light of day. In

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doing so, the former banking attorney fashions himself as a loner unafraid to expose the seamier side of political life.

He became a national media darling earlier this year when the Enron debacle unfolded amid news of workers and investors ruined by the collapse. The ranking member of the Senate consumer affairs subcommittee, he made headlines across the globe and garnered a spot on the talk show circuit when he laid into former Enron Chairman Kenneth Lay.

"I've concluded that you're perhaps the most accomplished confidence man since Charles Ponzi," Fitzgerald said. "I'd say you were a carnival barker, except that might not be fair to carnival barkers. A carny will at least tell you up front that he's running a shell game."

Most recently, Fitzgerald has been fighting his Illinois colleague, Democrat Dick Durbin, who is trying to cement into law Gov. George Ryan's and Chicago Mayor Richard Daley's agreement to expand O'Hare International Airport. He managed to irritate many in the state's political establishment by

launching a filibuster when Durbin first tried to advance the legislation.

Fitzgerald warned Daley shouldn't be trusted to handle the lucrative contracts that will come with an expansion. He said the agreement will steal too much control from the Federal Aviation Administration.

Even if he loses that battle, Fitzgerald stands to gain. He will win the loyalty of many thousands of suburban residents weary of airport noise. Many thousands more suburbanites who support expansion are likely to admire Fitzgerald's willingness to shine a light on the powerful Chicago mayor's dealings.

And that's what Fitzgerald will count on as he gears up for a 2004 re-election bid. He'll point to his efforts to expose problems with the O'Hare plan. He'll remind the majority of voters who oppose gambling expansion that he was the first in Springfield to call for competitive bidding of casino licenses. He'll figure out a subtle way to let Illinoisans know he stiffed the political establishment to pick U.S. Attorney Patrick Fitzgerald, who has aggressively pursued the Operation Safe Road investigation that dogs Ryan. He'll remind them he was the lone senator who voted against the post-September 11 bill to bail out the airline industry, noting it was suffering financially before terror struck. He'll remind voters that he bucked his party over drilling in the Alaskan wilderness.

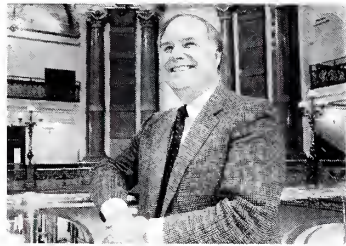
He also will appeal to people who only dream of his net worth by noting that he successfully pushed for stricter child safety seat standards and for a law to allow food stamp recipients to use their electronic benefit cards across state lines.

The senator has mostly avoided the tougher Chicago-area media and spent plenty of time appearing in downstate areas that were key to his victory nearly four years ago.

Fitzgerald may not be charismatic, but he is clever. His fellow politicians might disdain him, but, then, he isn't prospecting for their support anyway. □

Madeleine Doubek is assistant metro editor for politics & projects at the Daily Herald, a suburban metro newspaper.

Charles N. Wheeler III



Lawmakers' summer vacation could be over almost before it starts

by Charles N. Wheeler III

Facing perhaps the worst fiscal crisis in state history, Illinois lawmakers chose an equally unprecedented remedy — selling long-term bonds — to help fill a \$1-billion-plus hole in the state's day-to-day operating budget.

Legislative approval of the measure to allow Gov. George Ryan to borrow up to \$750 million for government operations underscored how difficult lawmakers found it this spring to raise taxes and cut spending enough to make ends meet. Instead, two days into overtime, the borrowing option became the final plank lawmakers hoped would shore up the \$53 billion budget they fashioned for the fiscal year starting July 1.

The spending plan included \$23 billion in general funds — some \$500 million less than current appropriations, but still some \$440 million higher than Gov. Ryan requested when he unveiled a scaled-down FY 2003 budget proposal in a Memorial Day address to the General Assembly.

To help bankroll the plan, lawmakers approved some \$675 million in additional revenue from higher taxes on cigarettes and riverboat gambling and from transfers among various state accounts, then headed home until the fall veto session.

But their summer vacation could be over almost before it starts, if Ryan calls them back into special session to

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do a better job of producing a balanced budget. His summons would be justified on several grounds, most notably the notion that the state should bond current operations, a practice long considered an anathema by public finance experts.

While an attractive way to pass the bills for current programs on to future generations, the practice could harm the state's bond rating, making it more costly to borrow for brick-and-mortar building projects typically financed with long-term bonds.

But there are other good reasons the governor might ask for a legislative encore. Consider the budget allocations now before him. In his Memorial Day address, Ryan agreed to restore some

\$323 million in cuts proposed in his initial budget plan, offered in February. The list included rescinding \$165 million in Medicaid rate cuts, adding back \$75 million for services to the mentally ill and the developmentally disabled, dropping an increase in co-payments for low-income parents with subsidized day care, and keeping open Vienna Correctional Center.

In return, though, the governor called for more than \$500 million in other cuts, including closing Sheridan Correctional Center and several work camps and adult transition centers around the state, privatizing prison food service operations and eliminating a fifth year of need-based scholarships for low-income college students. And he asked for \$590 million in tax hikes, including tripling the rate for the real estate transfer tax assessed when property is sold, as well as \$300 million in other revenue-raising measures.

Lawmakers embraced the governor's restorations, but kept funding for Sheridan and other facilities Ryan wanted to close, including the Zeller Mental Health Center in Peoria and the Lincoln Developmental Center. They also provided funds for fifth-year scholarships and state-run prison kitchens, and included hundreds of millions of dollars for their local pet projects. Legislators who championed these and other causes insisted revenues would be there to cover the restored spending.

Less impassioned observers, though, saw myriad vetoes as Ryan tried to balance the budget in dollars and cents, not just in rhetoric. Their point of view is supported by the revenue picture. While the governor wanted \$590 million in higher taxes, lawmakers approved only \$375 million, scaling back the take from cigarettes and riverboats and rejecting entirely the \$120 million increase in real estate transfer taxes. Instead, they voted to:

- Hike the cigarette tax by 40 cents to 98 cents a pack, raising an estimated \$240 million. Ryan wanted a 50-cent



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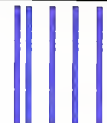
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boost, good for another \$45 million.

- Increase the rates for each step of the graduated riverboat gaming tax and boost the admission tax by \$1, for some \$135 million. The governor wanted taxes raised enough to get another \$50 million.

- Shift \$205 million into the general revenue fund from other accounts and use road funds, rather than general revenue funds, to cover \$95 million in operating costs for the secretary of state and the state police, all as Ryan wanted.

Each of these provisions, however, could be on shaky constitutional ground for reasons involving the number of votes required at the date of passage. Though seemingly a matter of parliamentary hair-splitting, the issue provides ammunition for lawyers eager to shoot down the measures. And any court challenge would delay the flow of new dollars into state coffers for months. In similar straits is legislation to save \$240 million by denying an additional break, mostly for businesses, on state income taxes as

Ryan could sign everything and let the next governor sort out the mess. He could veto \$700 million or so and take the heat from those losing services. He could sell the bonds and blow the state's credit rating. But don't be surprised if he asks lawmakers to spend the Fourth of July in the Capitol, too.

a result of the federal economic stimulus plan.

Indeed, the only money-saving proposal free of the timing shadow is a measure that would allow some veteran state employees to retire early, saving an estimated \$65 million.

Even as lawmakers struggled to finish the spring session, more bad revenue news arrived. With the books closed on May, state general fund receipts through 11 months of FY 2002 were down \$673 million from the same period in the prior fiscal year. The outlook is for the gap to continue to widen, so that when the fiscal year ends June 30 the budget deficit could exceed \$1 billion. The bills will have to be paid with FY 2003 tax receipts, when revenue growth is likely to be only some \$250 million to \$350 million.

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Charles N. Wheeler III is director of the Public Affairs Reporting Program at the University of Illinois at Springfield.

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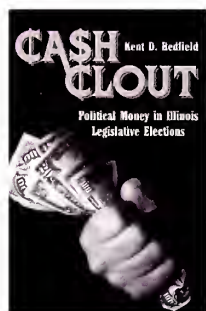
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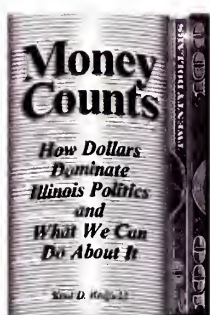
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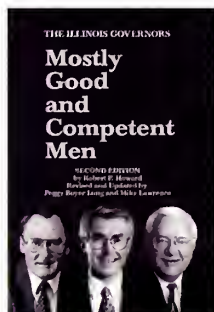
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